



# Public Service Commission of Wisconsin

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Public Service Commission of Wisconsin  
RECEIVED: 09/12/05, 11:22:23 AM

September 12, 2005

RE: Petition of SBC Wisconsin for Suspension of Wisconsin Statute  
sec. 196.196(1) with Regard to Basic Local Exchange Service

6720-TI-196

Comments Due:  
**Friday, September 23, 2005 – 4:00 p.m.**

Address Comments To:  
**Christy L. Zehner, Secretary of the Commission  
Public Service Commission**

This docket uses the Electronic Regulatory  
Filing system (ERF).

To The Parties:

The Briefing Memorandum in this proceeding is being provided for comment to those parties who are subject to the confidentiality agreement. Comments must be received by Friday, September 23, 2005, at 4:00 p.m. Party comments must be filed using the Electronic Regulatory Filing system (ERF). The ERF system can be accessed through the Public Service Commission's website at <http://psc.wi.gov>. Because Commission staff is not a party, the motion provisions in Wis. Admin. Code § PSC 2.23 are inapplicable to this staff request.

Responses are limited to fifteen pages. Parties are encouraged to correct facts only and not view this process as another opportunity to brief the case or engage in argumentative discourse.

Sincerely,

Christopher W. Larson, CPA  
Docket Coordinator  
Telecommunications Division

CWL:cdg:T:\ss\letter\2005 letter\6720-TI-196 request for briefing memo comments

Enclosure

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# **PUBLIC SERVICE COMMISSION OF WISCONSIN**

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## **Memorandum**

DATE: September 12, 2005

TO: The Commission

FROM: Gary A. Evenson, Administrator  
Christopher W. Larson, Auditor  
Nicholas A. Linden, Assistant Administrator  
Duane Wilson, Program and Planning Analyst  
Telecommunications Division

RE: Petition of SBC Wisconsin for Suspension of Wisconsin  
Statute sec. 196.196(1) with Regard to Basic Local  
Exchange Service

6720-TI-196

### **BRIEFING MEMORANDUM**

This briefing memorandum addresses a request by Wisconsin Bell, Inc., d/b/a SBC Wisconsin (SBC), to suspend Wis. Stat. § 196.196(1) with respect to residential basic local exchange service (BLES) in retail Rate Groups A and B.<sup>1</sup> This memo identifies the issues in this case, summarizes the positions of parties, and presents decision options for Commission consideration.

### **I. DECISION OVERVIEW**

#### **A. Background**

In Wisconsin, price regulation is an optional method of regulation defined by Wis. Stat. § 196.196. (Tr. 909.) SBC voluntarily elected price regulation. As a price regulated

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<sup>1</sup> Rate Groups A and B consist of the following 17 of SBC's 77 exchanges: Appleton, Beloit, Eau Claire, Fond du Lac, Green Bay, Janesville, Kenosha, Madison, Manitowoc, Menomonee Falls, Milwaukee, Neenah, Oshkosh, Racine, Sheboygan, Stevens Point, and Waukesha. In total, these exchanges comprise 701,953 of 968,979 of SBC's total residential access lines in Wisconsin as of December 31, 2004 (Ex. 4.121).

telecommunications utility under that statute, SBC is allowed flexibility to change prices within specified limits, regardless of profits. Average prices for BLES are limited by a formula based on inflation, minus a productivity offset, plus or minus incentives and penalties based on performance relating to service quality and infrastructure investments. For SBC, the formula is the most recent change in the gross domestic product price index, less a 3 percent productivity offset, plus up to a 2 percent incentive to encourage infrastructure investment, less up to a 2 percent disincentive for inadequate service or insufficient investment (price regulation formula). Since inception in 1994, the price regulation formula has resulted in more rate reductions than rate increases for SBC. (Tr. 708-709, 911.)

The services originally covered by the price regulation formula were BLES, basic service provided to business customers with no more than 3 lines (small business), and message telecommunications service (MTS or toll). Price regulation has already been suspended for SBC's MTS and small business services. Both of these suspensions were subject to conditions. BLES sold in a package or bundle has already been removed from the price regulation. The Court of Appeals has held that BLES in a package or service bundle is a new service and not subject to price regulation.<sup>2</sup> (Tr. 835.)

These Commission and court decisions have decreased the proportion of SBC's revenues that are subject to the price regulation formula under Wis. Stat. § 196.196(1) from 32 percent in 1994 to 7 percent for the period of July 2003 to June 2004. (Tr. 910.) If the Commission grants SBC's petition in this docket, this ratio would further decrease to \*\*\*CONF BEGINS\*\*\* X \*\*\*CONF ENDS\*\*\* percent.

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<sup>2</sup> *Wisconsin Bell, Inc. v. Public Service Com'n of Wisconsin*, 2004 WI App 223, 277 Wis. 2d 729, 691 N.W.2d 697 (CA 2004).

## **B. Docket Chronology**

SBC filed a petition with the Commission on November 24, 2004, under Wis. Stat. § 196.195. In its petition, SBC requests the suspension of Wis. Stat. § 196.196(1) with respect to the price regulation of residential primary access lines, residential local usage, and residential service order charges in Rate Groups A and B. SBC alleges that this suspension is appropriate because effective competition as defined by Wis. Stat. § 196.195(2) exists for residential customers in these exchanges.

A prehearing conference was held on February 18, 2005. The Citizens Utility Board (CUB) and Charter Fiberlink, LLC (Charter) were admitted as full parties. CUB was granted intervenor compensation, which included funding for an expert witness, Joseph Gillan. Extensive discovery requests were made by parties in order to obtain certain information from other parties as well as non-parties. Charter subsequently withdrew as a party on June 7, 2005. Technical hearings were held in Madison, Wisconsin, on June 13 and 14, 2005.

Public input with respect to SBC's petition was solicited via a Commission press release, an SBC bill page message included in bills of potentially affected customers, and SBC ads in newspapers. All of these communications included an invitation for the public to submit comments. The Commission received comments from more than 100 customers, approximately 90 percent of which opposed SBC's petition. In addition, public hearings were held June 17, 2005 in Madison, Wisconsin, and simultaneously via videoconference in Eau Claire, Menasha, and Milwaukee, Wisconsin. At the hearings, two people appeared in opposition and one in support of the petition.

Initial briefs were filed by SBC and CUB on August 2, 2005. Reply briefs were filed on August 19, 2005.

### **C. Key Decision Points**

The Commission's decision in this docket is whether or not to suspend price regulation of SBC's stand-alone BLES in its Rate Groups A and B. If the Commission decides to deregulate stand-alone BLES prices after a finding of effective competition and a determination that a lesser degree of regulation is in the public interest, the Commission must then decide if the public interest also requires that conditions be imposed on SBC. The following are the key decision<sup>3</sup> points and a brief summary of the parties' overall positions on the disputed issues:<sup>4</sup>

- What is the relevant market? (Issues List #1)
  - Should the relevant market include BLES in packages offered by SBC or other providers, including intermodal providers (wireless, cable, VoIP), or should the relevant market be limited to stand-alone BLES?
  - Should Menomonee Falls be treated like a Rate Group C exchange and therefore remain subject to price regulation?
- Does effective competition exist in the relevant market? (Issues List #2, 2.b., 5)
- Even if the Commission finds that effective competition exists in the relevant market, is a lesser degree of regulation for BLES justified and in the public interest? (Issues List #2.a., 2.b.(ix), 2.c., 3, and 5)
- What public interest conditions, if any, should be imposed if a lesser degree of regulation for BLES is ordered? (Issues List #4)

### **SBC Overall Position**

SBC believes the Commission should unconditionally grant its petition because the legal framework favors competition over regulation, the relevant market includes packages and intermodal offerings, and the relevant market is effectively competitive. In addition, the

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<sup>3</sup> The key issues are represented schematically in Appendix D.

<sup>4</sup> Three issues from the issues list were not contested – 4.b., 4.c. and 4.d. These are set forth in Appendix C.

requested relief is limited, reasonable and in the public interest, and the proposed conditions are unwarranted and anticompetitive. (SBC Initial Br. at 4-13.) According to SBC, effective competition undeniably exists in Rate Groups A and B, and the consuming public of Wisconsin needs the Commission to unleash the full benefits of competition and innovation by removing the asymmetric price cap regulation that hinders only one of the competitors in that market segment – SBC. The Commission can do so with firm assurance that such action will benefit, and not harm, Wisconsin’s residential customers. Failure to suspend price regulation would be harmful to competition, consumers, and the public interest. (SBC Initial Br. at 12-13.)

### **Citizens Utility Board (CUB) Overall Position**

CUB opposes SBC’s Petition because, CUB contends, the relevant market is limited to BLES, and effective competition does not currently exist in the market for BLES. Therefore, a lesser degree of regulation will not serve the public interest. According to CUB, now is not the time to deregulate the price of SBC’s BLES offering. Although the telecommunications industry is rarely static, the industry is currently in a state of upheaval. The number of CLEC lines in Wisconsin is falling, and alternative products are either not substitutes for BLES, not widely available, or simply without a proven track record. (CUB Initial Br. at 1-2.)

The remainder of this briefing memorandum explores these four decision points in greater depth, following some relevant observations about the legal underpinnings of the issues.

## **II. LEGAL FRAMEWORK**

This case requires the application of Wis. Stat. § 196.195, set forth in Appendix B attached hereto. Application of the statute, with little disagreement from the parties, does essentially boil down to answering the four key questions above. The Commission must:

- (1) Determine the market under Wis. Stat. § 196.195(2);
- (2) Determine whether the market is effectively competitive per subs. (2) (especially the seven factors) and (3);
- (3) Assess whether partial deregulation through the suspension of identified statutes can facilitate competition consistent with the public interest per subs. (3), (4), and (5); and,
- (4) Determine whether the public interest warrants imposition of conditions, per sub. (7).

The parties advance different interpretations of how to apply the statute. SBC argues there is a “presumption” in favor of competition, and states that the Commission has explicitly adopted antitrust standards. (SBC Initial Br. at 4; Reply Br. at 13, respectively.) SBC further argues that CUB’s interpretation of BLES as its own market would render Wis. Stat. § 196.195 a nullity because a price-capped company would never be able to show effective competition to obtain relief. CUB asserts that there must be effective competition in the market *before* the Commission may consider reducing regulation. (CUB Initial Br. at 4, 7.) CUB argues that the analysis of SBC’s witness, Dr. William Taylor, would support SBC raising prices until competition finally steps in, thereby practically mooted any analysis of effective competition. (CUB Initial Br. at 17.) Each side rejects the other’s arguments.

An important consideration to understanding both parties’ arguments is the relationship between Wis. Stat. § 196.195 and antitrust law. Staff’s analysis of the statute and relevant antitrust principles suggests that the parties’ positions (as stated above) are one step too far in opposing directions. The key debate is about the relevant product market – what products are included in it. Intertwined with that issue is the issue of market power as the test of the “outer limits” of the product market. Under Wis. Stat. § 196.195 and its associated legislative intent, there is no “presumption” in favor of competition and no “adoption” of antitrust principles as “the law,” which SBC seems to suggest. Nor is there a mandate in the statute, as understood by



CUB, that effective competition must pre-exist in a market before the Commission may apply the statute, especially where a suspension may facilitate competition “where it may exist.” 1985 Wisconsin Act 297, § 1(5). This analysis is grounded in the interpretation that antitrust law and principles are best used as an economics and legal policy framework to inform the Commission’s application of Wis. Stat. § 196.195.

The parties disagree about the products that should be considered as part of the “relevant market.” The definition of what products are included in a particular market is frequently disputed in antitrust cases. The criteria to determine what products are to be included has been described as follows:

"In considering what is the relevant market for determining the control of price and competition, no more definite rule can be declared than that commodities reasonably interchangeable by consumers for the same purposes make up that 'part of the trade or commerce', monopolization of which may be illegal." *Worldwide Basketball and Sports Tours, Inc. v. NCAA*, 388 F.3d 955, 961 (6th Cir.2005) (quoting *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 395, 76 S.Ct. 994, 100 L.Ed. 1264 (1956)). This "reasonable interchangeability" standard, which is the essential test for determining the relevant product market, "may be gauged by (1) the product uses, i.e., whether the substitute products or services can perform the same function, and/or (2) consumer response (cross-elasticity); that is, consumer sensitivity to price levels at which they elect substitutes for the defendant's product or service." *Worldwide Basketball*, 388 F.3d at 961 (quoting *White & White, Inc. v. American Hosp. Supply Corp.*, 723 F.2d 495, 500 (6th Cir.1983

*Rodney v. Northwest Airlines, Inc.*, 2005 WL 2009178, 2005, at \*4, 2005 Fed.App. 0734N (6<sup>th</sup> Cir. 2005).

When there is a dispute about the products (or services) to be included in a particular market, economists typically examine what is the likely effect of an increase in a product’s price. For example, suppose there is a dispute about the market for Ford pickup trucks and the question is whether the market only includes Ford pickups or includes other pick-ups such as Chevy. If

buyers will purchase a Chevy, if there is a small but significant increase in the price of Fords, the market is pickups generally; if buyers will continue to purchase Fords, then the market consists of Ford pickups.

In this case, the question becomes whether BLES subscribers would continue with the service if a small, but significant increase in price occurred or would they switch to some other service when facing such a price increase. If there is consumer demand for BLES and these customers will not switch when faced with a price increase, then the product market consists of BLES. On the other hand, if BLES subscribers are taking advantage of a regulated service and would readily switch to some other telecommunications service, then the product market would include such comparable service offerings.

A problem with this hypothetical analysis in this case is that the current price of BLES is determined by regulation, not by competition. In contrast, antitrust analysis usually assumes that prices are competitively determined for purposes of market definition. This limitation in antitrust analysis is a reminder that the Commission's analysis follows the specific prescriptions of Wis. Stat. § 196.195 and especially the seven factors in sub. (2). While antitrust principles may help define the market at issue, they do not supersede the Commission's duty in Wis. Stat. 196.195 to assess the enumerated factors, make the required findings of fact, and, as appropriate, specify a level of regulation consistent with the public interest.

This record contains mention of the antitrust concept of "submarkets." Legal commentators appear to have treated the term as archaic. However, the concept remains, but perhaps more correctly stated as an issue of properly testing for substitutability of products to define the product market.

The term ‘submarket’ is somewhat of a misnomer, since the ‘submarket’ analysis simply clarifies whether two products are in fact ‘reasonable’ substitutes and are therefore part of the same market. The emphasis always is on the actual dynamics of the market rather than rote application of any formula.

*Geneva Pharmaceuticals Tech. Corp. v Barr Laboratories, Inc.*, 386 F.3d 485, 496 (2<sup>nd</sup> Cir. 2004).

### **III. CONTESTED ISSUES AND DECISION OPTIONS**

#### **A. Relevant Market (Issues List # 1)**

**Issue:** What is the relevant market that includes SBC’s BLES?

**Background:** A major consideration in determining whether effective competition exists for BLES is defining the relevant economic market in which BLES is offered. A relevant economic market is defined in terms of its product and geographic scope. Consequently, this section of the briefing memorandum discusses the relevant product and geographic markets as separate sub-issues.

Wis. Stat. § 196.195(2) does not define “relevant market,” although the term relevant market is used frequently in the factors set forth therein that the Commission must consider in determining whether effective competition exists. The record evidence on relevant market is based on economic theory, antitrust law and prior Commission decisions.

#### **1. Relevant Product Market**

**Sub-Issue:** What is the relevant product market for SBC’s BLES?

**Transcript citations:** 11-18, 111(C)<sup>5</sup>, 62-66, 130-134(C); 87-89 (Gillan); 835-840, 879-884(C), 861 (Linden); 915-919, 953-957(C), 929-931, 967-969(C), 934, 937, 975(C) (Larson); 605-606, 621 (Loehman); 484-499, 513-533, 1044-1045, (Shooshan); 668-678, 681-693, 706-711, 721, 810-814(C) (Tattini); 174-179, 182, 257-259, 262-272, 272-294, 470(C), 338-339, 359-366, 368-369, 371-375, 448 (Taylor); 991-993, 1018-1020, 1024-1026 (Wilson).

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<sup>5</sup> (C) means this reference is part of the confidential record.

**Initial Brief citations:** 4-7, 13-27 (SBC); 4-8 (CUB).

**Reply Brief citations:** 1-12 (SBC); 4-10 (CUB).

**SBC Position:** The specific regulated product of interest is BLES. However, according to SBC, this does not mean that the relevant market only includes BLES. Arguing that it has applied antitrust principles and prior Commission decisions, SBC states that the relevant product market includes all residential services, whether provided by it or CLECs on a stand-alone basis or in a package, or by intermodal carriers (wireless, cable, and Voice over Internet Protocol [VoIP]), which customers already use as substitutes for BLES. (SBC Initial Br. at 4-5, 15-21; SBC Reply Br. at 5-12.)

SBC also argues at pp. 21-27 of its Initial Brief that:

- The attempts of CUB and staff to define a “BLES-only” market suffer from the “Cellophane fallacy”;
- CUB and staff’s submarket theory is a meaningless anachronism that does not alter the ultimate test or outcome; and,
- The current regulatory state of BLES is irrelevant to the issue of market definition.

**CUB Position:** CUB argues that stand-alone BLES is the relevant product market for this case. (CUB Initial Br. at 4.) CUB argues that the Commission should reject SBC’s position that the relevant product market should include packaged services and services from intermodal carriers such as wireless, cable telephony, and VoIP for the following reasons:

- Packaged services are not substitutes for stand-alone BLES;
- Wisconsin law established that stand-alone BLES is a separate product; and,
- Residential services provided by other intermodal carriers are not substitutes for stand-alone BLES. (CUB Initial Br. at 5-8.)

According to CUB, packages, wireless, cable and VoIP are not substitutable for stand-alone BLES since they would not play a price constraining role if SBC were to increase its price for stand-alone BLES. (CUB Initial Br. at 4-8; Tr. 16-17.) These services invariably include additional features on top of basic phone service that many stand-alone BLES customers do not want or need. (Tr. 16.) CUB also refutes SBC's Cellophane fallacy arguments in its Reply Brief at pp. 7-10 when it concludes that SBC commits the Cellophane fallacy.

**Analysis:** Based on the positions of the parties and staff's testimony, the following key questions relate to defining the relevant product market:

- Are packages, CLEC wireline, wireless, cable and VoIP offerings substitutable for stand-alone BLES?
- Are the actions of some BLES customers to substitute packaged services for stand-alone BLES evidence that packaged services are in the relevant product market?
- Should current BLES rates (CUB's position) or a theoretical competitive market rate (SBC's position) serve as the starting point for a market power analysis?
- Should the regulatory status of a product (namely stand-alone BLES) influence or determine the definition of relevant product market?
- To what extent do antitrust principles and prior Commission decisions assist the determinations in this case?

The antitrust arguments were briefly reviewed in Section II. The remaining key questions pertain to product interchangeability or substitutability and SBC market power. The record evidence on these issues is also central to whether effective competition exists (or not) in the relevant market. To avoid redundancy, discussion of this evidence is presented below in the section on effective competition. But first, the relevant geographic market sub-issue is discussed.

**Decision Options for the Relevant Product Market:**

1. (SBC Position): The relevant product market includes all residential services, whether provided on a stand-alone basis or in a package.
2. (CUB Position): The relevant product market is limited to stand-alone BLES.

**2. Relevant Geographic Market**

**Sub-issue:** What is the relevant geographic market for SBC's BLES?

**Transcript citations:** 960-961 (Larson); 721, 730-731 (Tattini); 180-181, 785-786

(Taylor).

**Initial Brief citations:** 4, 14-15, 57-58 (SBC); 8 (CUB).

**Reply Brief citations:** None

**Background:** For the most part, the relevant geographic market, Rate Groups A and B, is not in dispute. Staff, however, raised the issue of whether one exchange, Menomonee Falls, where CLEC market share lags the other exchanges in Rate Groups A and B, should be excluded from the proposed suspension of the price regulation provision.

**SBC Position:** SBC views the relevant geographic market by Metropolitan Statistical Areas (MSAs), but for practical reasons, defines the geographic market as Rate Groups A and B. (SBC Initial Br. at 4; 14-15.) Menomonee Falls should remain in Rate Group B.

**CUB Position:** CUB does not dispute SBC's position that the relevant geographic market is Rate Groups A and B. (CUB Initial Br. at 8.)

**Analysis:** Menomonee Falls lags behind the other 16 exchanges in CLEC market share.<sup>6</sup> If SBC's petition to suspend price regulation is approved, the Commission could choose to

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<sup>6</sup> As of March 2005, CLECs had gained an \*\* CONF BEGINS\*\* XXX \*\*CONF ENDS\*\* percent market share in the Menomonee Falls exchange. This compares to a 29.6 percent average market share in Rate Group B and a 24.1 percent average market share in Rate Group A. (Ex. 4.221.)

continue to treat customers of this exchange as if they are Rate Group C customers, i.e., under Wis. Stat. § 196.196 price ceilings. SBC opposes this suggestion, stating that it intends to set prices at the rate group level and lacks the practical ability to price at the exchange level. Thus, customers in the Menomonee Falls exchange would continue to be offered services at prices that SBC Wisconsin offers in all the other Rate Group B exchanges, with the higher levels of competition. (Tr. 721; SBC Initial Br. at 57-58.) While the Menomonee Falls exchange is discussed here as part of defining the relevant market, the decisions options are included in Section III.B., under effectiveness of competition, due to inter-relationship with that issue. In lieu of choosing option 2 on this issue, the Commission could alternatively address this issue by imposing a condition on SBC to require price uniformity within each rate group. SBC appears receptive to such a condition. (Tr. 730-731.) This condition is further addressed in Section III.D.7 below.

**B. Existence of Effective Competition (Issues List # 2)**

**Background:** To decide the issue, Wis. Stat. § 196.195(2)(a) requires the Commission to consider factors such as the number and size of firms providing service; the options for service available to customers and the rates, terms and conditions for each option; the ability of competitors to expand into the market; the market power of each provider; the incentives for each firm to vigorously compete for customers; and barriers to entry. This means analyzing the various sources of competition (landline, wireless, cable, and VoIP), as well as comparing stand-alone BLES to packages and the ability of SBC to raise prices above current and competitive market prices.

According to Wis. Stat. § 196.195(2)(a)5., the determination of effective competition should consider the relevant market power of each telecommunications provider, as well as any

apparent trends in how such market power may change in the future. The parties' positions and record evidence incorporate this view.

**Transcript citations:** 11-12, 18-59, 112-129(C), 66-80, 134-148(C), 154-155(C); 89-99, 102-105 (Gillan); 915-919, 922-924, 929-934, 938-939, 975-976(C) (Larson); 831-832, 840-843, 884-887(C), 857-861; 863-867 (Linden); 563-591, 631-645(C), 596-616, 621-627, 1051-1085 (Loehman); Tr. 480-482, 484-507, 513-533, 537-538, 541-556, 1038-1050 (Shooshan); 668-693, 711-712, 731-732, 752-764, 771-772, 797-799, 817-818 (Tattini); 183-245, 463-468(C), 259-261, 294-319, 471(C), 338-349, 353-355, 363-364, 378-380, 383-437, 448-451, 777-781, 783-787 (Taylor); 988-997, 1000-1005, 1019, 1021, 1025 (Wilson).

**Initial Brief citations:** 1, 8-11, 27-50 (SBC); 8-29 (CUB).

**Reply Brief citations:** 1-5, 12-38 (SBC); 1-3, 10-15 (CUB).

**SBC Position:** The evidence – including the testimony of staff and CUB witnesses – overwhelmingly demonstrates that the relevant market for basic local exchange service in Rate Groups A and B is not just effectively competitive, but is vigorously competitive and getting more intensely so every day. (SBC Initial Br. at 1.) Specifically, SBC summarizes its direct evidence in its Initial Brief at pages 8-11 by presenting the following facts and arguments on effective competition from CLEC wireline, wireless and cable:

### **CLECs**

- SBC-WI faces competition for residential customers not only from large national CLEC providers, such as MCI, that target larger metropolitan areas, but also from well-established regional providers, such as TDS MetroCom, McLeodUSA, and Choice One, that target smaller cities and towns throughout Wisconsin.
- In Rate Group A there are an average of 36 CLECs per exchange, with an average of 13 serving 150 lines or more, while in Rate Group B there are an average of 23 CLECs per exchange with 6 serving 150 lines or more. Tr. 186 (Taylor Direct at 24); *see also* Tr. 572-73 (Loehman Direct at 13-14).
- CLECs' share of the residential market in Rate Groups A and B grew an average of 14.2% annually in 2003 and 2004. Tr. 578 (Loehman Direct at 19).



## Cable

- Cable telephony providers are in 15 of the 17 exchanges in Rate Groups A and B and expanding at incredible rates due in large part to their existing cable customer base and low telephony costs. Indeed, 93% of Rate Group A customers and 78% of Rate Group B customers are in wire centers where a cable provider is already providing competitive residential service. Tr. 281 (Taylor Rebuttal at 25); Tr. 603 (Loehman Rebuttal at 10).

- Cable companies pass an overwhelming majority of the homes in the country (and in SBC-WI's service territory in particular), and over two-thirds of households nationally subscribe to cable service. Tr. 281 (Taylor Rebuttal at 25).

- The two largest cable providers in Wisconsin, Time Warner and Charter FiberLink, are aggressively marketing their telephone services to their massive existing customer base in SBC-WI's service area and rapidly gaining customers, and thereby turning up the intensity of residential competition several notches.

- Time Warner can provide telephony to 85% of its Milwaukee area, and its marketing has proven extremely successful. \*\*\* **START RESTRICTED ACCESS CONFIDENTIAL**

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- Charter's telephony footprint reached 120,000 homes by the end of 2003 and Charter predicted that it would be (sic) reach 800,000 homes by mid-2005.

\*\*\* **START CONFIDENTIAL**

**END CONFIDENTIAL \*\*\*** *Id.* at 640-41 (14-15); *see also* Tr. 587-590 (Loehman Direct at 28-31). Charter expects to eventually achieve 30% penetration of its telephone service five years after roll out. Tr. 281 (Taylor Rebuttal at 25).

- Because of cable's many advantages (large, existing customer base, existing facilities of its own, financing by large companies, the ability to offer the triple play of voice, video, and Internet, and freedom from most regulation), and the fact that cable companies do not purchase wholesale services or elements from SBC-WI, the potency of cable competition and its ability to discipline SBC-WI's pricing decisions is far greater than the already effective check posed by CLEC competition.

## Wireless

- Several wireless carriers likewise serve every exchange in Rate Groups A and B and continue to increase their number of subscribers in Wisconsin by 10% of more each year, even as ILEC (and CLEC) total access lines continue to decrease. Tr. 194 (Taylor Direct at 32).

- It is expected that in a few years the number of wireless subscribers in Wisconsin will surpass the number of switched access lines. *Id.*

- Moreover, a survey of Wisconsin consumers shows that a substantial and growing number either have or will “cut the cord” from wireline service completely. Tr. 494-96 (Shooshan Direct at 18-20). This is consistent with numerous research reports by investment analysts and others on the growth of cord-cutting. *See, e.g.,* Ex. 1.090 (Forrester, *Cord-Cutting Reaches One in 20 Mobile Households* (May 5, 2005) (discussing intent of much larger numbers of users to cut the cord on wireline service)).

Competition also is widespread. Of the 17 exchanges in Rate Groups A and B:

- All have at least 4 larger CLECs serving residential customers;
- All have wireless alternatives; and
- 15 have at least one cable provider (and some have two) ready and willing to provide telephony throughout its area.

As SBC-WI’s access lines have declined over the past few years, these competing carriers have grown swiftly: CLECs alone now have 26% of the residential market, and CLECs and intermodal carriers together have 35% and continue to grow. Tr. 566 (Loehman Direct at 7). SBC-WI is losing lines to these carriers even at the current, artificially depressed price of BLES, which further proves that the services they offer are comparable in price and quality to SBC-WI’s BLES (and refutes staff’s and CUB’s claims that competitors’ offerings are materially different from BLES).

In addition to wireline, wireless and cable, SBC argues that the presence of VoIP providers in the marketplace, the fact that they are actively marketing their services at prices comparable to what SBC charges for residential BLES, and the fact that a majority of consumers are aware of VoIP and have access to it, show that VoIP is also a substitute for SBC’s residential BLES. (SBC Initial Br. at 44-46.) And finally, as mentioned above in the relevant product market section of this memorandum, SBC argues based on experience that packaged offerings are substitutable for stand-alone BLES.

For all the foregoing reasons, SBC concludes that each of the seven factors under Wis. Stat. § 196.195(2) are met to support a finding of effective competition in the relevant market.

**CUB Position:** CUB also argues that the evidence in this case is obvious and compelling – SBC failed to demonstrate that effective competition currently exists. According to CUB, the evidence establishes that the telecommunications industry is in an uncertain state of flux, and now is not the time to deregulate the price of the most basic component of residential local exchange service because almost no price constraining competition exists for BLES. (CUB Reply Br. at 1.)

Specifically, CUB presents these facts and arguments on the lack of effective competition from CLEC wireline, wireless, VoIP and cable:

- The state of wireline competition is too fragile to warrant a lesser degree of regulation. Virtually all CLEC market share comes from six competitors. Of these six, four rely entirely on UNE-P, which is no longer viable because of the FCC's rulings. MCI and AT&T, two of the largest CLECs, are being purchased by SBC and Verizon and will no longer be serious competitors, and Talk America is no longer taking customers in Wisconsin. McLeod, which has a mix of UNE-P and its own switching, has been losing lines, is in financial trouble, and is pursuing a purchaser to avoid bankruptcy. (CUB Initial Br. at 9-12.)
- TDS Metrocom, the lone large CLEC that provides its own switching, continues to grow, but a single CLEC cannot discipline SBC's BLES rate. This is especially the case because TDS does not offer any residential service for less than \$32 as part of a package that requires a two-year contract. Even though TDS Metrocom is the most successful wireline competitor, it continues to suffer huge financial losses. (CUB Initial Br. at 12-13.)
- SBC's proposed replacements for UNE-P are inadequate inasmuch as the replacement price is more than 14 times the price for the same service as previously set by this Commission and the FCC, and between 11 and 19 times more than the estimated cost of providing service. (CUB Initial Br. at 14-15.)
- No other major competitor offers any type of telephone service that is comparable to SBC's stand-alone BLES, which is still utilized by many customers living in SBC's service territory. (CUB Initial Br. at 15-16.)

- Permitting SBC to raise its prices to “competitive levels” will not assure competitive entry in the residential market and is contrary to the legislative intent. The price of BLES should not be deregulated until SBC can establish that effective competition already provides a limit. (CUB Initial Br. at 16-18.)
- Intermodal competition should not be considered in the Commission’s analysis because it is neither a substitute for wireline service, nor is it a substitute for BLES. (CUB Initial Br. at 18-29.)
- Wireless phone service is not a substitute for residential wireline service or BLES, due to quality and reliability issues. The vast majority of customers do not view wireless as a substitute for BLES, and those few that do are young. The price of wireless service, which is generally more expensive than BLES, will not constrain the price of BLES if the price of BLES is deregulated. (CUB Initial Br. at 18-22.)
- Cable telephony does not provide “the same, equivalent or substitutable” service or effective competition for BLES. (CUB Initial Br. at 22-27.)
- Cable telephony does not provide effective competition for BLES because it is not widely available in the relevant geographic market. (CUB Initial Br. at 24-25.)
- Cable telephony does not provide effective competition for BLES because it is not available at comparable rates, terms and conditions. That is to say, the cable telephony offerings are more expensive and not sufficiently available throughout SBC’s service territory. (CUB Initial Br. at 25-26.)
- A cable-telco duopoly will not provide effective competition within the meaning of Wis. Stat. § 196.195 or the public interest standard. (CUB Initial Br. at 26-27.)
- VoIP is not a substitute for residential wireline service or stand-alone BLES. (CUB Initial Br. at 27-29.)
- The VoIP addressable market is extremely narrow since it is only available if the customer has cable modem. Only a limited number of broadband customers can obtain VoIP as a separate product from a voice line because SBC requires its broadband customers to also purchase local phone service from SBC. The combined cost of broadband and voice greatly exceeds the price charged for BLES. There are also service and reliability issues with VoIP as compared to BLES. (CUB Initial Br. at 27-28.)

- VoIP does not provide effective competition for BLES because the relative penetration rates for broadband are effectively limited to higher income households, not for the mass market. (CUB Initial Br. at 28-29.)
- The FCC has determined that VoIP is not a substitute for BLES. (CUB Initial Br. at 29.)

Finally, as mentioned above in the relevant product market section of this memorandum, CUB argues that packaged offerings are not substitutes for stand-alone BLES at current price and will not play a price constraining role if SBC increases prices for stand-alone BLES. (CUB Initial Br. at 4-7.)

**Analysis of Each Factor in Wis. Stat. § 196.195(2)(a):**

As stated above, to decide whether effective competition exists in the relevant market, the Commission must consider seven factors in Wis. Stat. § 196.195(2)(a). The outcome of this consideration is greatly influenced by how the relevant market is initially defined. As discussed in the previous section, SBC defines the relevant market to include BLES whether sold separately or in packages; whereas CUB defined the relevant market to be stand-alone BLES.

Each statutory factor is discussed below. After briefly setting forth the positions of the parties and noting any staff testimony, several questions are posed to help focus the Commission's deliberations. The ultimate decision point, however, is whether these seven factors support a finding that effective competition exists in the relevant market. SBC says these factors support such a finding, while CUB says that they do not support a finding of effective competition in the overall residential local exchange service market or in the stand-alone BLES product market.

Besides the interrelationship between this issue and the relevant market issue, a second dispute regarding effective competition centers not on competitive conditions up to this point in time, but on expected future trends. Is there enough uncertainty regarding competition trends for the Commission to deny the petition or impose conditions such as a 2-year limited suspension (as discussed in Section III.D.5.)? Or should the Commission rely on its ability to revoke the suspension at any time if competitive conditions deteriorate?

A third key question to consider is whether any conditions the Commission adopts under Section III.D. will, in effect, enable or guarantee the effectiveness of competition.

**(a) The number and size of telecommunications utilities or other persons providing the same, equivalent, or substitutable service in the relevant market. (Issues 2.b.i. and 2.b.ii. on the Issues Matrix.)**

According to SBC's brief at pp. 45-46, all basic local exchange services (whether provided by SBC, CLECs using unbundled network element (UNE) platform (UNE-P), UNE loop (UNE-L), or resale, or intermodal competitors) fit the description of same, equivalent or substitutable services. SBC claims there are numerous large and small carriers providing local exchange service in competition with SBC throughout Rate Groups A and B, including at least 4 large CLECs (and typically many more) and multiple intermodal competitors in all of the 17 exchanges.

CUB argues in its Initial (at 9-13) and Reply (at 11) Briefs that 26.4 percent of the residential local exchange market is held by only six CLECs. (Tr. 55, 576.) Of those six CLECs, two are being acquired by RBOCs, two are completely dependent on UNE-P, one has put itself on the market, and the last continues to suffer significant financial losses. CUB cautions the Commission about relying on historical market share figures given changes in the industry, most notably the pending mergers involving AT&T (with SBC) and MCI (with

Verizon) and the FCC's decision to eliminate switching, and hence UNE-P, as a required UNE based on TELRIC pricing. SBC argues that these events will not adversely affect competition. Staff testimony raised concerns similar to those noted by CUB.

In addition to its arguments on the number and size of providers, CUB argues that intermodal carriers are not substitutes for BLES, and that they do not provide effective competition. (CUB Initial Br. at 18-29; CUB Reply Br. at 12-15.) SBC strongly disagrees, claiming that intermodal carriers provide, and customers readily substitute, those intermodal carrier offerings for BLES. The issue of substitutability is further discussed under other factors.

The key questions to consider may include the following:

- Is the number and size of telecommunication utilities or other persons providing the same, equivalent or substitutable service in the relevant market sufficient to ensure adequate customer choice for BLES?
- Will pending mergers and the elimination of UNE-P adversely affect the number and size of telecommunication utilities or other persons providing the same, equivalent or substitutable service in the relevant market?
- Should intermodal services offered by cable, wireless and VoIP be considered the same, equivalent and substitutable services for the purpose this analysis?
- What effect on competition will result from entry by large cable providers such as Time Warner and Charter?

**(b) The extent to which the same, equivalent or substitutable service is available in the relevant market. (Issues List # 2.b.iii.)**

Based on SBC's Initial Br. at 46, the key questions below would be answered by SBC in the affirmative and should be used to support a finding that customers are able in the relevant market to obtain the same, equivalent or substitutable services at comparable rates, terms and conditions.

CUB would answer these same questions in the negative. In addition to raising doubts about product substitutability with stand-alone BLES, CUB argues that the extent of cable, wireless and VoIP penetration does not support a finding of effective competition. (CUB Initial Br. at 7-8, 18-29; Reply Br. at 12-15.) CUB's predictions of declining landline CLEC competition also do not support such a finding. (CUB Reply Br. at 10-12.) Moreover, CUB argues that wireline competitors do not offer stand-alone BLES. (CUB Initial Br. at 15-16.)

- Are numerous CLECs, wireless, VoIP, and cable providers actively advertising and providing their services in competition with SBC's BLES throughout Rate Groups A and B?
- Are the same, equivalent, or substitutable services ubiquitously available from multiple providers in the relevant market?

**(c) The ability of customers in the relevant market to obtain the same, equivalent or substitutable services at comparable rates, terms and conditions. (Issues List # 2.b.iv.)**

This factor is closely related to the previous factors discussed above. The evidence and arguments presented by the parties in support of their respective positions are much the same. The difference with this factor is that it attempts to look at substitutability from a consumer perspective, rather than a provider perspective.

Based on SBC's Initial Br. at 46, the following key questions would be answered by SBC in the affirmative and should be used to support a finding that customers are able in the relevant market to obtain the same, equivalent or substitutable services at comparable rates, terms and conditions. CUB, on the other hand, strongly disagrees.

- Do residential customers in the relevant market have access to multiple alternative carriers?
- Are residential customers able to obtain those competitive services in large numbers?



- Have customers shown their ability to obtain substitute services from other carriers by moving to those other carriers?
- Have customers' ability to obtain substitute services led to significant and ongoing declines in market share and access lines for SBC Wisconsin?
- Does the fact that customers are moving to competitors show that the competitors' offerings are made on comparable rates, terms, and conditions in terms of overall value?

**(d) The ability of telecommunications utilities or other persons to make the same, equivalent or substitutable service readily available in the relevant market at comparable rates, terms and conditions. (Issues List # 2.b.v.)**

As SBC discussed in pages 17-21 and 29-45 of its Initial Brief, CLECs and intermodal carriers are currently offering and aggressively marketing substitute services at comparable rates, terms, and conditions throughout Rate Groups A and B. (SBC Initial Br. at 47.) CUB, as mentioned elsewhere, sees a decline in CLECs' ability to compete. Besides questioning the premise that intermodal services offer the same, equivalent or substitutable service, CUB raises questions about the ability of cable and VoIP to deploy services ubiquitously to cover the SBC footprint. The fact that most providers do not offer a stand-alone BLES product, and the few that do so either charge a higher price than SBC's offering or are so lightly marketed as to be almost invisible to customers, raises the question about the ability of telecommunications utilities or other persons to make the same, equivalent or substitutable service readily available in the relevant market at comparable rates, terms and conditions. (Tr. 915-917.)

Again, this factor largely turns on the decision on relevant market. The Commission may consider the following questions in its deliberations:

- Do telecommunications utilities or other persons have the ability to make the same, equivalent or substitutable service readily available in the relevant market at comparable rates, terms and conditions?

- If intermodal providers are included in the relevant market, do they sufficiently cover SBC's footprint in Rate Groups A and B to conclude that they have the ability to make the same, equivalent or substitutable service readily available in the relevant market at comparable rates, terms and conditions?
- If stand-alone BLES is the relevant market, does the absence of stand-alone BLES product offers from telecommunications utilities and other persons indicate an inability to make the same, equivalent or substitutable service readily available in the relevant market at comparable rates, terms and conditions?

(e) **The relevant market power of each telecommunications utility or other person providing the same, equivalent or substitutable service in the relevant market and any apparent trends in how the market power of each telecommunications utility may change in the future. (Issues List # 2.b.vi.)**

SBC cautions the Commission in its Initial Br. at 47 about relying on market share to draw conclusions about market power. According to SBC, the more relevant inquiry for purposes of the fifth statutory factor is “any apparent trends in how the market power of each telecommunications utility may change in the future.” SBC points to recent loss of market share as evidence that it lacks market power. Moreover, SBC believes that in order for it to exercise market power, two conditions would have to be present: (1) there would have to be little competition from firms producing substitute services, and (2) entry into the market by potential competitors would have to be difficult. SBC claims that neither of these conditions is present in Wisconsin.

As discussed elsewhere, CUB has argued that these conditions are present in Wisconsin. Moreover, CUB argues that SBC's ability to raise the price of stand-alone BLES to some unspecified level is indicative of its market power. (CUB Initial Br. at 2, 30; CUB Reply Br. at 1-3.) These arguments are closely related to the parties' debate about whether the analysis of market power should begin at current prices or at market price levels. SBC argues that the

ability to raise the price of stand-alone BLES above current prices up to a market price is not indicative of market power, as CUB claims. Rather, market power exists if prices can be raised above market levels without loss of market share.

The relevant questions therefore are:

- Does SBC have the ability to raise prices above current or competitive market levels without loss of market share, and is this indicative of market power?
- Does market share, and recent changes in market share, reflect market power in the relevant market?
- Are there few or many firms producing substitute services?
- Is entry into the relevant market by potential competitors difficult?
- What effect will mergers, regulatory decisions, and the emergence of cable providers have on SBC's ability to exercise market power?

**(f) Any affiliation of any telecommunications utility providing the service in the relevant market which may affect competition. (Issues List #2.b.vii.)**

SBC's Initial Brief on this factor focuses on its affiliation with Cingular Wireless. SBC concludes that it lacks market power within the relevant market despite its affiliation with Cingular. (SBC Initial Br. at 48-49.) Neither CUB nor staff addresses SBC's affiliation with Cingular but both voiced concern, as discussed elsewhere, with SBC's pending merger with AT&T. The key questions to consider for this factor are:

- Does SBC's affiliation with Cingular Wireless affect competition in the relevant market?
- Will SBC's pending merger with AT&T (if completed) affect future competition in the relevant market?

**(g) The existence of any significant barrier to the entry or exit of a provider of the service in the relevant market. (Issues List # 2.b.viii.)**

SBC argues in its Initial Br. at 49-50 that competitors are not required to invest in their own facilities to enter the market, yet the presence of facilities-based competitors in the market – as found in Wisconsin – is a reliable sign of maturing and durable competition in the market. (Tr. 232.) SBC also notes that intermodal providers are also facilities-based. And finally, SBC argues that current, regulated BLES rates themselves form a barrier to entry and discourage other carriers from offering stand-alone BLES.

CUB argues in its Initial Br. at 11 that UNE-P is no longer a viable entry strategy. Both CUB and staff note that the elimination of UNE-P and recent increases in UNE loop rates have increased barriers to entry for landline CLECs. SBC argues that CLECs still have a UNE-P alternative, namely Local Wholesale Complete that is available at commercial rates. (SBC Initial Br. at 32-33.) However, these rates are considerably higher than TELRIC-based UNE-P rates and CLECs' use of Local Wholesale Complete at this time is minimal, as is resale. (CUB Initial Br. at 14-15.) SBC responds by saying that CUB and staff are basically arguing that the FCC was wrong when it found that CLECs would not be impaired without switching, and thus UNE-P, at TELRIC prices. (SBC Initial Br. at 32.) SBC makes a similar argument about UNE prices set by the Commission. Staff, however, testified that higher loop rates (especially given current retail rates) may raise barriers to entry, but also stated that these higher loop rates are TELRIC compliant. (Tr. 858.)

The key questions to consider may include the following:

- Does the elimination of UNE-P increase barriers to entry?
- Do recent increases in UNE loop rates increase barriers to entry given current retail rates?

- Would increasing current retail rates for stand-alone BLES reduce barriers to entry?
- Does the existence of facilities-based landline CLECs and intermodal providers indicate that there are not significant barriers to entry?

**Decision Options:**

1. (SBC Position): The relevant market is effectively competitive and there is no reasonable basis to conclude that it will cease being effectively competitive.
2. (Alternative or Intermediate Position): The relevant market, except for the Menomonee Falls exchange, is effectively competitive and there is no reasonable basis to conclude that it will cease being effectively competitive.
3. (Alternative or Intermediate Position): The relevant market is effectively competitive, but it is uncertain that it will continue being effectively competitive. Therefore, the docket will be held in abeyance and the record will be refreshed in one year for further consideration by the Commission.
4. (Alternative or Intermediate Position): The relevant market is effectively competitive, but there is a reasonable basis to conclude that it will cease being effectively competitive.
5. (CUB Position): The relevant market is not effectively competitive.

**C. Public Interest (Issues List # 2.a., 2.c., 3.a. through 3.f., and 4.a.)**

**Issue:** Will suspension of price regulation for SBC's BLES serve the public interest?

**Background:** In investigating SBC's petition, Wis. Stat. § 196.195(2) not only directs the Commission to determine whether effective competition exists, but also whether competition under a lesser degree of regulation will serve the public interest. Arguably, the Commission could find that effective competition exists, but could also find that a lesser degree of regulation is not in the public interest. The public interest factors can be found in Wis. Stat. §§ 196.03 (1) and (6), and the legislative intent in Act 297 (see Appendix B) that created Wis. Stat. § 196.195. Those standards can be summarized as follows: promoting competition, infrastructure

development, consumer choice, efficiency, quality of life, societal goals or universal service.

(Tr. 832-833.)

**Transcript citations:** 64, 66-68 (Gillan); 832-833, 844-850, 888-894(C), 855-857, 860-861(Linden); 911, 913-914, 919-921, 924, 927-928, 935-936, 974(C), 938, 949(C), 951-952(C), 958(C) (Larson); 539-540 (Shooshan); 713-716, 819-821 (Tattini); 204, 210-211, 239-245, 261, 319-329, 348-349, 358-359, 408-409, 437-439, 451-457, 781-783 (Taylor); 997-1000, 1005-1006, 1026 (Wilson).

**Initial Brief citations:** 1-3, 11-12, 50-53 (SBC); 30-33 (CUB).

**Reply Brief citations:** 39-41 (SBC); 1-2, 15-18 (CUB).

**SBC Position:** A lesser degree of regulation would enhance economic efficiency by enabling unfettered competition to create the optimal levels of competitive pricing, packaging, and product development. Removal of disparate regulation, and allowing SBC Wisconsin's prices to move to competitive market levels, will enhance the incentives of competitors to provide competitive pricing structures and innovative products to residential customers – resulting in increased choices for consumers and, in turn, the ability to hold their current supplier to a higher standard of service. There would be no adverse public impact from removing price caps. (SBC Initial Br. at 3, 11-12.)

There are several protections in place that ensure the public interest is protected even after price caps for BLES are eliminated. For example, under Wis. Stat. § 196.195(10) the Commission can revoke the suspension of price caps if SBC acts in ways contrary to the public interest. (Tr. 240.) In addition, competitors that experience unfair competition or anti-competitive conduct by SBC have recourse to both the Commission and the courts. (Tr. 204, 210-11.) Substantial safeguards (such as price floors and imputation) also are in place in Wis. Stat. §§ 196.204 and 196.219 to prevent anti-competitive acts by SBC Wisconsin, such

as pricing below cost or cross-subsidization. (Tr. 204.) The duties and obligations imposed by the Telecommunications Act of 1996 serve as a further check on SBC Wisconsin's conduct. (Tr. 211.) These protections are *in addition* to those already inherent in a competitive market. (SBC Initial Br. at 50-53.)

The relief requested is limited, reasonable and in the public interest. Although the statutes authorize relief from all disparate regulation, SBC has asked for the suspension of price regulation of BLES in only 17 of its 77 exchanges. The Wisconsin statutes recognize that when a telecommunications service is effectively competitive, the need for disparate regulation ends, and such regulation must be suspended. (SBC Initial Br. at 1.)

**CUB Position:** SBC did not demonstrate how allowing the price of BLES to rise to some unspecified level advances anyone's interest other than SBC's. If the Commission chooses to lift SBC's price cap for basic local exchange service, real people will be affected. SBC's proposed additional pricing flexibility would affect \*\*\*CONF BEGINS\*\*\* XXX \*\*\*CONF ENDS\*\*\* SBC customers who currently purchase BLES.

If the Commission grants SBC's request, only one thing is certain: the price SBC's customers pay to receive a working dial tone will rise. Everyone – including SBC – agrees that if SBC's Petition is granted, the price of BLES will start climbing, but SBC has not said where or when it will stop. (Tr. 64, 418, 837, 919.) An SBC witness stated that an increase of \$5 over current rates would not be high enough to reach “competitive” market levels, but he could not say what price would be high enough. (Tr. 452.)

The prices of services more elastic than BLES will not fall, as SBC claims, since all of its other services are already deregulated and at “competitive levels” – SBC is free to reduce other

prices in whatever manner it desires. (Tr. 67.) Deregulating SBC's BLES rates will only permit SBC to exploit its residual customer base. SBC would then have more revenues from markets where choice is limited to fund selective rate reductions for customers in markets where more choices actually exist. (Tr. 68.)

The Commission should deny SBC's petition in its entirety. SBC has not demonstrated that effective competition exists for BLES, nor how granting its position will serve the public interest. On the contrary, the evidence shows that the state of competition in the local exchange service market (including both wireline-alone and wireline with intermodal carriers) is volatile and uncertain. No competitor's product serves a price-constraining role for stand-alone BLES. (CUB Initial Br. at 32.)

**Analysis:** SBC contends that controlling prices of BLES "change[s] the profit-maximizing set of prices that SBC would chose to provide," despite the Court of Appeals ruling that allowed SBC to price packages without upper limits. (Tr. 408-09.) SBC's sole reliance on promoting competition or economic efficiency may pose conflicts with other public interest standards such as universal service and promoting quality of life. (Tr. 844.)

Price regulation has resulted in rate decreases which have provided benefits to customers. Suspension of price regulation, on the other hand, may cause rate increases of unknown magnitude because current prices are below competitive level and demand for BLES is inelastic. (Tr. 66-67.) The price of BLES may well approach package prices, accomplishing a *de facto* abandonment of BLES. (Tr. 856.)

If SBC's petition is approved, there would be no statutory upper price limits for SBC's residential service. Many BLES customers commented that they object to SBC receiving



unilateral power to increase rates. While some wholesale customers of SBC may view increasing BLES stand-alone rates as mitigating the price squeeze argument they made in docket 6720-TI-187, other CLECs see higher rates as a source of revenue that SBC could use to thwart competition. (Tr. 849-850, 860-861.)

Rate increases may cause some low-income customers to drop their service (Tr. 848), and may increase USF payments to SBC Lifeline customers, straining Wisconsin's already tight USF budget. (Tr. 920-921; also see Section III.D.6. of this memo for further discussion.)

If the Commission believes that competition is effective, that it will stay so, and that any necessary conditions (discussed in the next section) will ameliorate any public interest concerns, the statutes would arguably require the suspension of price regulation (Options 1 or 2).

If, however, the Commission believes that, even with conditions, the relevant market would not be effectively competitive, or that the public interest would not be served by suspension of Wis. Stat. § 196.196(1), it could deny SBC's petition (Option 3). If it believes that competitive conditions are uncertain, the Commission might choose to approve a limited term suspension (see Section III.D.5. of this memo) or to hold the docket in abeyance until the record is refreshed in the future (see Option 3, Section III.B. of this memo).

CUB and staff point out that, although permitted by statute, it may not be easy to re-impose price cap regulation later if the Commission decides to suspend it now. Reasserting price cap regulation would involve another lengthy proceeding in which the burden of proof will shift to the proponents of re-imposing price regulation of SBC, and involve issues regarding whether rate changes in the intervening period should be repealed. (Tr. 851, 925; CUB Initial Br. at 32-33.)

**Decision Options:**

1. Suspend Wis. Stat. § 196.196(1) without conditions.
2. Suspend Wis. Stat. § 196.196(1) with conditions.
3. Deny SBC's petition.
4. Hold this matter in abeyance for one year.

**D. Conditions, if any, for Public Interest Protection**

As previously noted in Section C., the public interest criteria that the Commission must refer to are stated in Wis. Stat. §§ 196.03(1) and (6), and the legislative intent of Act 297. Appendix B contains the relevant statutory provisions.

Pursuant to Wis. Stat. § 196.195(7), if the Commission suspends any provision of law under sub. (5), it may require any condition reasonably necessary to protect the public interest because of the suspension. The following sections of this memo address each condition that was discussed on the record. With the exception of customer notice provisions in Section III.D.4., SBC believes that each of the conditions is unnecessary because there is no need to have a different level of regulation for SBC than for any other provider of BLES when effective competition exists. (Tr. 242.)

CUB and staff presented testimony about several conditions the Commission could consider to protect the public interest. Conditions 1 through 4 address possible conditions to promote competition and customer choice by improving the effectiveness of the relevant market. Conditions 5 through 10 address possible conditions designed to promote universal service and preserve customer choice by mitigating the impact of price cap suspension on customers.

Condition 11 addresses what information and process the Commission might use to decide whether to re-impose price regulation if future competitive conditions erode.

**Decision Options:**

1. No conditions are necessary to ensure that competition under a lesser degree of regulation will serve the public interest.
2. One or more conditions are necessary to ensure that competition under a lesser degree of regulation will serve the public interest.

**1. Customer Education (Issues List #4.e.)**

**Issue:** Should SBC be required to file a customer education program, for the Commission's further approval, to publicize the availability of BLES?

**Background:** Evidence may suggest limited public knowledge about the availability of the lower-priced BLES option. A customer education program might improve such knowledge.

**Transcript references:** 926-927, 964-965(C) (Larson); 850-853 (Linden); 698-699, 710-711, 722-728, 775-776, 788-795 (Tattini); 247-248, 334 (Taylor).

**Initial Brief citations:** 58-59 (SBC).

**Reply Brief citations:** None

**SBC Position:** SBC refutes that aggressive marketing is a problem. It does not make sense to require SBC to institute a new customer education program promoting BLES because 1) this would be a discriminatory burden competitors are not required to undertake and 2) an education requirement would be duplicative and unnecessary in light of Wisconsin Administrative Code §§ PSC 165.043(4), 160.06(3), and 160.063 that require disclosure of low-cost options. (Tr. 727-28.) SBC claims that the existing programs are working – Lifeline customers have increased by 10 percent since January 2003, while total primary lines have decreased by 18 percent during the same period. (Tr. 722-728.)

**CUB Position:** CUB took no position on this issue.

**Analysis:** Staff testified that some customers may not be aware of the lower priced stand-alone BLES, and that the Commission has received customer complaints that a package or service bundle was “sold” to them even though they might be better off, given their usage, to subscribe to stand-alone BLES. (Tr. 847-848.) SBC stated that it did not promote the purchase of stand-alone BLES for the period 2002 and 2004. SBC’s customer service representatives have received monetary compensation at various times for selling packages. (Ex. 4.05) Moreover, written scripts and instructions to customer service representatives are not clear with respect to a service representative’s obligation, if any, to disclose the existence of stand-alone BLES, much less to encourage a customer to subscribe to stand-alone BLES if it is in the customer’s best interest. (Tr. 847-848.) A demographic analysis reveals that customers in the poorest SBC exchanges are significantly more likely to subscribe to packages than BLES. (Tr. 927.) SBC counters that customers in poorer neighborhoods are more transient, resulting in more contact with SBC, and more opportunity for SBC to notify such customers about package offers. (Tr. 710-711.)

The Commission may wish to consider whether to require a consumer education plan on how to select an economically suitable service. The plan would be subject to further Commission approval. (Tr. 851.)

## **2. Naked DSL (Issues List # 4.i.)**

**Issue:** Should the Commission open an investigation to determine if SBC’s requirement that its broadband customers also purchase SBC local telephone service is an unreasonable impediment to competition?

**Background:** SBC's DSL affiliate requires that its broadband customers also purchase basic local phone service from SBC. The California Public Utilities Commission recently investigated this issue and concluded that this practice violates California law.<sup>7</sup> The issue of whether to require ILECs (and their affiliates) that offer broadband to do so without a requirement that customers also purchase voice service has generally been referred to as the "Naked DSL" issue.

**Transcript references:** 923-924 (Larson).

**Initial Brief citations:** None

**Reply Brief citations:** None

**SBC Position:** SBC took no position regarding this issue.

**CUB Position:** CUB took no position regarding this issue.

**Analysis:** For those customers who want broadband, but not cable TV service, and are outside the distance limitations of a CLEC's DSL service, SBC is the only option. If SBC did not cooperate with affiliates that offer DSL to customers only on the condition that they also purchase basic local phone service from SBC, these customers would have more choice for BLES. Staff testified that opening a separate docket to examine this issue may afford a means to improve the effectiveness of the relevant market. (Tr. 923-924.) Although highlighted in this record as an issue, it is a very broad subject not adequately addressed by SBC or others, so imposing a condition in this docket, or even making the determination to open a new docket on naked DSL, does not seem feasible or needed in this proceeding. This would not preclude possible future Commission investigation of that issue, if deemed appropriate.

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<sup>7</sup> Order Resolving Complaint, *Telscape Comms., Inc. v. Pacific Bell Tel. Co.*, Cal. PUC Case 02-11-011 (mailed Dec. 20, 2004).

### **3. UNE-P Replacement (Issues List # 4.i.)**

**Issue:** Should the Commission delay the effectiveness of any suspension of Wis. Stat. § 196.196(1) until the conclusion of a proceeding to fully implement the equivalent to UNE-P?

**Background:** SBC is still required to offer each of the elements of UNE-P under § 271 of the Act and to connect those elements together. The principal difference between SBC's obligations under § 251 (which has ended) and § 271 (which continues) is one of price. Whereas elements offered under § 251 must be priced in accordance with the FCC's Total Element Long Run Incremental Cost (TELRIC) rules, elements offered in compliance with § 271 are judged in accordance with the potentially more liberal "just and reasonable" standard. Furthermore, SBC must connect § 251 elements with other wholesale arrangements (including § 271 elements), an activity known as "commingling."

**Transcript references:** 60-61, 99-102 (Gillan); 731-732 (Tattini); 334-335 (Taylor).

**Initial Brief citations:** 60 (SBC); 33 (CUB).

**Reply Brief citations:** 41-42 (SBC); 18 (CUB).

**SBC Position:** CUB's § 271 proposal is patently unlawful and unnecessary. The Commission has no jurisdiction over pricing of § 271 elements, which are governed by the FCC under 47 U.S.C. §§ 201-02. *TRO*, ¶¶ 656, 663-64.<sup>8</sup> Moreover, the ability to raise local exchange service prices towards a competitive level does not endanger CLECs and, as staff testified (Tr. 850), would mitigate claims CLECs have made elsewhere of an alleged "price squeeze" between retail and UNE prices by increasing the gap between those prices. Also, there are

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<sup>8</sup> Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 F.C.C.R. 16,978 & 19,020 (Errata) (rel. Aug. 21, 2003) (subsequent history omitted).

numerous commercial agreements addressing this issue. (Tr. 334-35, 731-732; SBC Initial Br. at 60.)

**CUB Position:** If the Commission does grant SBC's Petition, one necessary condition would be to delay the effectiveness of any pricing flexibility until the conclusion of a proceeding to fully implement the equivalent to UNE-P as required by § 271 of the Telecommunications Act of 1996. (Tr. 60.) SBC should be required to offer a just and reasonable § 271 UNE-P offering that provides CLECs a meaningful opportunity to compete in order to prevent further decay in residential competition. In the absence of such action, the Commission must not consider any of the UNE-P based competition in judging competitive conditions as such competition will end. (CUB Initial Br. at 33.)

**Analysis:** CUB is hopeful that if the Commission is able to operationalize a just and reasonable § 271 UNE-P offering that provides CLECs a meaningful opportunity to compete – which is how such offerings should be reviewed – further decay in residential competition can be prevented. CUB further recommends that the Commission delay the effectiveness of any lifting of SBC's price regulation for basic local service until it is clear that the effects of SBC's prior litigation have been reversed, not to mention until after any subsequent litigation on its § 271 requirements have been concluded and all appeals have been exhausted.

On cross-examination, Mr. Gillan said that he did not believe the FCC's *Triennial Review Remand Order (TRRO)*<sup>9</sup> precludes the Commission from establishing wholesale switching rates and, in fact, requires state commissions to do so but under a different pricing standard (just and reasonable). (Tr. 99-100.) But for a pending arbitration before the Tennessee commission that

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<sup>9</sup> Order on Remand, *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 F.C.C.R. 2533 (Feb. 4, 2005).

predates the *TRRO*, Mr. Gillan could not identify any state commission that has set switching rates under § 271. (Tr. 101-102.)

This issue in large measure turns on the Commission's jurisdiction to set SBC's wholesale switching rates, albeit using a different pricing standard (just and reasonable) instead of TELRIC. Stated differently, is the Commission pre-empted (or not) from setting SBC's wholesale switching rates post-*TRRO*? Assume for the sake of discussion that the Commission has such jurisdiction and can lawfully set SBC's wholesale switching rate, the question then turns on whether this condition is necessary or desirable from a public policy perspective to preserve and promote competition. In other words, will this condition mitigate the impact of the FCC's decision to eliminate wholesale switching, and thus UNE-P, as a TELRIC-based required UNE as of March 2006?

#### **4. Customer Notice (Issues List # 4.i.)**

**Issue:** What customer notice requirements, if any, should be required for rate changes?

**Background:** SBC is currently required to give notice to customers of BLES rate changes pursuant to Wis. Stat. § 196.196(1)(f). Since SBC requests suspension of Wis. Stat. § 196.196(1), it would appear that an unconditional grant of SBC's petition would eliminate this notice requirement.

**Transcript references:** 925-926 (Larson); 852 (Linden); 722, 774-775 (Tattini); 335 (Taylor).

**Initial Brief citations:** 56-57 (SBC).

**Reply Brief citations:** None

**SBC Position:** SBC is willing to accept a notice requirement similar to the one contained in the Commission's *Small Business Order* in docket 6720-TI-173, which provides:



“SBC shall provide written notice via bill message, bill insert, or separate mailing, of price increases . . . before the customer is billed at the increased rate.” This is the same notice provision applicable to “other services” not subject to price regulation under Wis. Stat. § 196.196(3)(c) and is substantially identical to the requirement imposed by the Commission when it suspended price regulation of intraLATA toll service.

**CUB Position:** CUB took no position on this issue.

**Analysis:** One of the requirements for a competitive market to operate is informed consumers. One of the most basic pieces of customer information is price. Unlike many other goods and services, the price of BLES is not readily apparent to the customer at the time of purchase. Staff testified that the Commission may wish to consider requiring SBC to continue to use the same type of customer notice of rate increases that is used for price regulated services. SBC responded that it was willing to give some notice to customers, but disputed the specifics of such notice. The difference between these two options can be found in the portions of the price regulation notice requirement in Wis. Stat. § 196.196(1)(f) that are italicized below:

Notice shall be published in a *newspaper* of general circulation in the service area to be affected within a reasonable time period after the notice of the rate change is given to the commission, and shall be included in or on the bill of each affected customer in the billing first following *notice to the commission*. The notice to customers shall contain all of the following:

1. *An estimate of the dollar amount of the monthly change for the typical residential customer that would result if the rate change becomes effective.*
2. *A statement that a customer who desires to comment on the rate change may call or write the commission or who desires the complete details of the rate change may call or write the telecommunications utility.*
3. *A statement that describes the nature and extent of the commission’s review of the proposed rate change.*

Under SBC's proposal, notification could be done by the bill page message or bill insert or, a direct mail to the customer. (Tr. 774.) It would appear that either continuing the price regulation notice requirements or adopting the notice requirements for other services would provide customers with adequate notice of rate changes. The notice suggested by staff could possibly give customers the impression that the Commission could impact the proposed changes, which it could not. SBC's proposal is consistent with Commission orders suspending price regulation of small business<sup>10</sup> and MTS<sup>11</sup> services.

Notwithstanding the foregoing, the Commission may wish to consider omitting a notice provision altogether if it determines to grant the Petition, in order to permit application of rules of the Department of Agriculture, Trade & Consumer Protection, namely Wis. Admin. Code ch. DATCP 123. When the Commission, by order, specifies a consumer notice procedure, Wis. Admin. Code § DATCP 123.12(1)(a) specifically removes application of foregoing DATCP rules governing telecommunications and cable provider subscriptions. If the DATCP chapter applied, a rate increase could be noticed by bill insert, much the way increases are currently noticed, but there would be an explicit requirement that the notice of a rate increase be given not less than 25 days no more than 90 days prior to the increase taking effect. Wis. Admin. Code § DATCP 123.04. In addition, a violation of a DATCP rule, unlike a Commission rule, is enforceable by direct consumer action in court, with an opportunity for recovery of costs and disbursements. Wis. Stat. § 196.207(6). Omission of a notice requirement in the order is

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<sup>10</sup> Final Decision, *Petition of SBC for Suspension of Wisconsin Statute § 196.196(1) with Regard to Small Business Customers*, PSCW Docket No. 6720-TI-173 (June 3, 2004).

<sup>11</sup> Findings of Fact, Conclusion of Law and Final Order, *Investigation of the Level of Regulation of Intrastate InterLATA Toll Telecommunications Service*, PSCW Docket No. 05-TI-104 (July 29, 1988).

arguably consistent with more reduced regulation for a market where other competing providers are subject to Wis. Admin. Code ch. DATCP 123.

**5. Limits on Term of Suspension (Issues List # 4.h.)**

**Issue:** Should the Commission suspend Wis. Stat. § 196.196 on a trial basis, which would automatically expire after a specified period?

**Transcript references:** 924-925 (Larson); 850-853 (Linden); 720-721 (Tattini); 334 (Taylor).

**Initial Brief citations:** 56 (SBC).

**Reply Brief citations:** None

**SBC Position:** Temporary suspension would be administratively wasteful, as it would require the Commission to repeat the exact same analysis it is performing in this proceeding. A sunset is unnecessary overkill in light of the statutory authority to revoke the suspension. (SBC Initial Br. at 56.)

**CUB Position:** CUB opposes any suspension of price caps for SBC at this time.

**Analysis:** If the Commission believes that the market is currently competitive, but that there is a reasonable basis to conclude that it will cease being so, it might choose to hold this matter in abeyance. Alternatively, it may be reasonable to choose to approve a limited term suspension, under which a fresh look in two years will determine what steps, if any, ought to be taken respecting the level of regulation. (Tr. 852-853.)

**6. Limits on rate increases (Issues List # 4.f.)**

**Issue:** Should basic local exchange service rates be capped in any manner, such as \$2 or \$5 over a 2-year period?

**Background:** Price regulation currently sets caps on prices for BLES. An unconditional grant of SBC's petition would allow unlimited rate increases. This condition could create a middle ground by replacing price regulation with a different, more flexible price cap.

**Transcript references:** 913-914, 919-921, 936-937 (Larson); 850-853 (Linden); 699-700, 719-720, 773-774 (Tattini); 248-249, 334, 458-460 (Taylor).

**Initial Brief citations:** 56 (SBC).

**Reply Brief citations:** None

**SBC Position:** Staff's arbitrary proposal of a maximum increase of \$2 over a two-year period lacks any record support, especially in light of larger increases this Commission has permitted in less competitive circumstances. (Tr. 719-20; SBC Initial Br. at 56.) SBC believes it has demonstrated that effective competition exists and that any annual price cap would harm the competitive market and consumers. If the Commission insisted on such a cap, it should be higher than staff's proposal of a maximum increase of \$2 over a two year period. The \$2 lacks support, especially in light of larger increases this Commission has permitted for customers of certain CenturyTel ILECs in Wisconsin. If this Commission feels that it is necessary to place some cap on price changes, notwithstanding the harm it would cause to competition and ultimately consumers, then it should be higher than the cap just approved for CenturyTel's annual price changes, such as a \$5 increase in monthly rates over two years. Of course, any cap should then be eliminated at the end of the second year. (Tr. 719-720.)

**CUB Position:** CUB took no position on this issue.

**Analysis:** If SBC is granted the unlimited freedom it requests to increase BLES rates in Rate Groups A and B, it is uncontested that the likely effect would be that rates would increase to "competitive levels." SBC witnesses could not identify what those levels would be. Staff

testified that, based on limited competition for BLES (as opposed to packages), and SBC's record of raising rates after price ceilings were removed for MTS and small business services, one probable action may be that SBC would raise BLES rates to a level that would effectively eliminate BLES as a viable option to its packaged and bundled offerings. This would result in a negative impact on customer choice, one of the factors for determining public interest in Wis. Stat. § 196.03(6). (Tr. 913-914, 919.)

If BLES rates increase approximately \$5.50 or less per month, the rate increases would be borne by Lifeline customers, and would have no direct impact on money paid out by the USF. Each dollar of rate increase more than \$5.50; however, will cause a direct increase of approximately \$630,000 in Lifeline payments to SBC to cover the Lifeline discounts. Absent any statutory increase in the \$6 million USF budget cap, SBC rate increases above \$5.50 would severely impact other USF programs. (Tr. 920-921.)

Imposition of a set limit on rate increases would:

- Recognize the existence of some competition, yet preserve a lower-priced option, especially for Lifeline customers;
- Ease, to some extent, the price squeeze issue raised in docket 6720-TI-187 by CLECs;
- Alleviate competitor concerns that unlimited price increases will be used in an anti-competitive fashion by SBC; and,
- Prevent scarce universal service fund monies from being diverted from other USF programs to funding SBC rate increases. (Tr. 852.)

SBC testified that under alternative regulation plans approved for certain CenturyTel ILECs, residential customers face annual increases that average almost \$1.40 per year, with much less competitive choices that SBC Wisconsin customers in Rate Groups A and B do. (Tr. 719-720.) According to staff testimony, however, most of this potential increase is

dependent on CenturyTel decreasing business, intrastate switched access, or other rates. A more accurate comparison with CenturyTel may be to use the 2 percent potential unrestricted rate increases authorized for CenturyTel companies. This would amount to an annual potential rate increase of approximately \$.39. In addition to the rate rebalancing provisions, there are many other provisions of the CenturyTel alternative regulation plans. SBC may or may not wish to be subject to such provisions. (Tr. 936-937.)

There is a legal question regarding this condition. It is questionable whether suspending statutes to permit a \$1-2 rate increase without a necessary predicate finding of effective competition is legally permissible, absent a stipulation from the parties. Arguably, such a rate increase would amount to merely raising the price cap for the 17 exchanges, while retaining the current price cap for SBC's remaining 60 exchanges. This action would amount to a rate re-design, thereby making compliance with Wis. Admin. Code § PSC 163.05 a prerequisite. At a minimum, re-noticing of this case and an opportunity to be heard may be a necessary procedural step before adopting this approach. This legal question is not a concern, however, if the Commission finds that the relevant market is effectively competitive, but that the suspension of Wis. Stat. § 196.196(1) is not in the public interest.

If the Commission believes that the only legal authority under which it could implement a limited term suspension of Wis. Stat. § 196.196(1) would be under the alternative regulation plan provisions of Wis. Stat. § 196.195(12), it could open a separate investigation.

## **7. Rate Deaveraging (Issues List # 4.j.)**

**Issue:** Should SBC be prohibited from charging different rates in different areas as a condition of any pricing relief?

**Background:** SBC currently charges the same rates throughout Wisconsin. There is a potential concern that if SBC's petition were granted, customers in less competitive areas may be subject to higher rates than those in less competitive areas.

**Transcript references:** 730-731 (Tattini); 328, 375-376, 439-440 (Taylor).

**Initial Brief citations:** 60-62 (SBC).

**Reply Brief citations:** None

**SBC Position:** SBC argues that there is no need to limit rate deaveraging. Although SBC has no intention or practical ability to price at the exchange level, it should be noted that there is no record support for this condition. Moreover, SBC already has the power to deaverage BLES rates as a matter of law. (Tr. 730; SBC Initial Br. at 60-62.) SBC also states, however, that it intends to set prices at the rate group level, not at the exchange level, and is amenable to a condition memorializing this intent. (Tr. 721.)

**CUB Position:** SBC should not be allowed to charge different rates within a rate group. In this way, if competitive conditions do vary geographically, the lowest priced services available in areas with competition must be equally available to customers in other exchanges in the rate group.

**Analysis:** As evidenced by variations in the number of competitors serving different SBC exchanges, competitive pressures do vary geographically. If SBC has the ability to charge different rates in different exchanges, customers in less competitive areas may be subject to

higher rates than those in less competitive areas. A condition prohibiting deaveraging may alleviate concerns about the Menomonee Falls exchange discussed earlier in this memo. On the other hand, the Commission might create opportunities for arbitrage by CLECs if it forbids deaveraging as a response to market conditions or cost conditions. (Tr. 439-440.)

Regardless of the legal question of whether SBC is able to deaverage its rates under current law, there is no dispute that the Commission has the authority to impose a condition regarding deaveraging if it is necessary to protect the public interest. Despite its objections, SBC's opposition appears to be negotiable: "Notwithstanding the lack of support for such a condition, and solely because it is not inconsistent with the pricing freedoms SBC might revisit its objection to this proposed condition if it were part of an otherwise appropriate final decision in this case." (Tr. 730-731.)

#### **8. Uniform availability (Issues List # 4.j.)**

**Issue:** Should the Commission impose a condition requiring SBC to offer promotions uniformly throughout a rate group?

**Background:** This condition is very similar to the one regarding rate deaveraging. If the Commission were to prohibit rate deaveraging within a rate group without an additional condition regarding promotions, SBC might accomplish de facto deaveraging by filing promotional tariffs that would be available in limited areas.

**Transcript references:** 61, 80-81 (Gillan); 731(Tattini).

**Initial Brief citations:** 33-34 (CUB).

**Reply Brief citations:** 18 (CUB).



**SBC Position:** SBC Wisconsin finds such a condition to be unnecessary and unsupported.

**CUB Position:** The Commission should require SBC to standardize its offering of lower rates or promotions. In other words, if SBC chooses to offer a lower rate or promotion to customers in one exchange of a rate group, that lower rate or promotion must also be offered to customers in all of the exchanges in that rate group. (Tr. 61, 81; CUB Initial Br. at 33-34.) In this way, if competitive conditions do vary geographically, the lowest priced services available in areas with competition must be equally available to customers in other exchanges in the rate group. (Tr. 60-61.)

**Analysis:** Although SBC initially opposed this condition, such opposition appears to have been based on a misunderstanding. SBC stated that “It would be far less objectionable if it were limited to the concept that services (promotions or standard offerings) to be sold in one exchange should be made available at the same terms and conditions as all exchanges within that rate group.” (Tr. 731.)

Mr. Gillan’s surrebuttal clarified that his recommendation is simply that if SBC offers lower rates or promotions in any part of a rate group, that same offer must apply throughout that rate group. (Tr. 80-81.)

#### **9. Lifeline Customers (Issues List # 4.j.)**

**Issue:** Should Lifeline customers in Rate Groups A and B be treated as if they are in Rate Group C, i.e., continue under price regulation?

**Background:** The Lifeline program keeps phone service affordable by reducing monthly phone charges for income-eligible customers. Lifeline customers would arguably be most adversely affected by suspension of price regulation. (Tr. 844-848.)

**Transcript references:** 850-853, 857 (Linden); 716-719 (Tattini); 333 (Taylor); 999 (Wilson)

**Initial Brief citations:** 53-55 (SBC)

**Reply Brief citations:** None

**SBC Position:** SBC Wisconsin opposes this condition because it fundamentally confuses the purposes of price caps and the Lifeline program and would harm competition by creating an implicit subsidy funded solely by one competitor in the market. (Tr. 717.) Retention of caps for Lifeline customers fails to recognize the purchasing patterns of Lifeline customers, and would be a perverse solution to a problem that does not exist. Price regulation is a tool to combat the problem of lack of competition. Lifeline is a tool to battle the problem of poverty. If the lawful suspension of price regulation results in effective rates to Lifeline customers above acceptable levels, the proper policy response would be to use the *right* tool for the job – to supplement explicit Lifeline subsidies on a competitively neutral basis. (SBC Initial Br. at 53-55.)

Further, data from docket 05-GF-147 shows that staff's calculation of the current SBC Wisconsin R-1 (basic residential single party) rate is \$4.72 below the average R-1 rate of the other local service providers in the state. Many Lifeline customers pay more than the current SBC BLES rate and receive the same Lifeline credit as SBC customers receive.

**CUB Position:** CUB did not take a position on this issue.

**Analysis:** BLES rate increases of less than \$5.50 per month would be borne by the Lifeline customers. Rate increases above this amount would increase the customer credit paid

for by the USF. \*\*\*CONF BEGINS\*\*\*

\*\*\*CONF ENDS\*\*\* (Ex. 1.036). These customers would be most affected by SBC's Petition if granted, since they have few, if any, competitive alternatives at this price level. (Tr. 845-846.)

In response to rate increases, Lifeline customers may have to drop their service or fall behind in paying their bills and be subject to being disconnected. (Tr. 844; Ex. 4.06.) SBC has not performed any analysis on the impact of increasing BLES rates on uncollectible accounts (Tr. 848) or on lower-use stand-alone BLES customers, especially Lifeline customers and the programs that keep them on the network. (Tr. 849.)

SBC believes that keeping Lifeline service under price regulation would violate federal law and send the wrong price signals to Lifeline-eligible customers and would hide the cost of the Lifeline plan from the customers who ultimately pay for it. Federal law requires the elimination of implicit subsidies and further requires that universal service subsidies (such as Lifeline) be explicit and competitively neutral. (Tr. 333.)

SBC's arguments against staff's suggestion may conflict with other evidence in the case. SBC's response to a staff data request (Ex. 4.11) indicates that the stand-alone BLES rate is \*\*\*CONF BEGINS\*\*\* XXX \*\*\*CONF ENDS\*\*\*. Moreover, no provision of the Lifeline program is being modified. (Tr. 857.)

SBC also argues that, even if there is a potential issue, the Lifeline program is already designed to deal with BLES price increases and different rates in different areas. The program

has a trigger level of \$15 per month, and when the price exceeds the Lifeline credit by that level the Lifeline credit can increase as well. (Tr. 718-19.) However, the USF has a statutory spending cap of \$6 million, and any increase in payments to SBC Lifeline customers as a result of SBC rate increases could mean cuts to other USF programs.

**10. Extension Tariff (Issues List # 4.j.)**

**Issue:** Should the Commission impose a condition that any changes to the current tariff that provides for the free extensions of facilities up to one mile from existing facilities be subject to further Commission approval?

**Background:** SBC's current tariffs provide for the free extensions of facilities up to one mile from existing facilities. SBC charges customers for extensions longer than one mile. The question is whether the suspension of price regulation of BLES would allow SBC to potentially change this extension policy.

**Transcript references:** 84-87 (Gillan); 921 (Larson); 852 (Linden); 722-723 (Tattini); 335 (Taylor).

**Initial Brief citations:** 59-60 (SBC); 34 (CUB).

**Reply Brief citations:** 18 (CUB).

**SBC Position:** The line extension tariff is utterly unrelated to the petition. First, there is neither evidence nor legal justification for imposing price regulation on the line extension tariff in this case. Second, because the local exchange market is effectively competitive, there is no reason to regulate the prices of line extension services. (Tr. 285.) Third, SBC gains no ability to extract supracompetitive prices from its line extension offering when it obtains the ability to price its BLES flexibly. (Tr. 335.) Fourth, SBC currently has no plans to implement a line

extension charge, and if it ever did the Commission could choose to investigate the charge at that time. (Tr. 723; SBC Initial Br. at 59-60.)

**CUB Position:** The Commission should clarify that any lesser degree of regulation it chooses to impose will not change the current tariff that provides for free extensions of facilities up to one mile from existing facilities. (Tr. 84-87.)

CUB witness, Joseph Gillan, acknowledged that a change in the line extension policy, such as a separate charge for extensions in lieu of the “one-mile free” policy currently in the tariffs, could represent a diminution of value received by existing customers. (Tr. 86-87.)

**Analysis:** This issue asks what tariff services are covered by the suspension of Wis. Stat. § 196.196(1), with respect to BLES as defined in Wis. Stat. § 196.01(1g). SBC argues that this issue is irrelevant to this case and has not presented any evidence respecting changes in the line extension tariff. SBC also does not believe that “line extensions are currently, if they ever were, price-regulated.” (Tr. 714.) Staff is concerned about an arguable lack of clarity as to where line extension tariffs fit in (or out of) the scheme of SBC’s price cap regulation. Staff proposes a kind of “stand still” order with respect to changes in SBC’s line extension tariffs. This concern arises, in part, from the tariffing freedom given price-regulated telecommunications utilities that arguably permits extraction of activities from an existing tariffed service and treating the activities as a purportedly “new telecommunications service.”<sup>12</sup>

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<sup>12</sup> The issue of the relationship of extension tariffs to price regulation arose in *Complaint Against Ameritech Wisconsin Filed by Wisconsin Builders Association, Inc.*, PSCW Docket No. 6720-TI-167, in which SBC’s 1998 decision to make developers pay for “green field” installations was challenged by an association of real estate developers. Prior to hearing, SBC settled that case without resolving any price regulation issues in a Commission-accepted stipulation. The stipulation included a reinstatement of the terms of the current tariff, that is, no charges to developers and free extensions up to one mile from existing SBC facilities.

The issue does not have a great deal of factual or legal development on the record. The Commission could determine that the record is inadequate to determine whether or not the line extension tariff is a part of the BLES for which suspension relief is sought, and reserve the issue for potential future consideration. Consistent with such a determination, although not required, the Commission may, if it desires, additionally provide that SBC not change the line extension tariff without further Commission review and order.

**11. Reporting (Issues List # 4.g.)**

**Issue:** Should any suspension be accompanied by changes in accounting and/or reporting requirements?

**Background:** If the Commission grants SBC's request, it has the statutory authority to revoke that suspension at any time, if necessary, to protect the public interest, pursuant to Wis. Stat. § 196.195(10). In order to assess whether the suspension, if granted, continues to be in the public interest, the Commission may wish to require SBC to file certain reports.

**Transcript references:** 926 (Larson); 852 (Linden); 700-701, 729-730, 735 (Tattini); 250, 335-336, 440-442 (Taylor).

**Initial Brief citations:** 59 (SBC).

**Reply Brief citations:** None

**SBC Position:** There is no need for changes in accounting or the establishment of additional reporting requirements. The Commission already conducts market competition surveys, and SBC would continue to participate in those surveys, providing retail in-service information, if requested. However, it is worth noting that SBC Wisconsin has borne the brunt of surveys in the past and, given that, the Commission lacks authority over the fastest-growing

component of competition (intermodal providers), these efforts are likely to continue to miss an ever greater part of the competitive picture. (Tr. 700-701.)

Asymmetric requirements impose costs on SBC that are not borne by its competitors and will distort the market, without adding any benefits. (Tr. 250.) The costs of staff's suggested reports will far outweigh the benefits, if any. SBC's principal concern is that as demonstrated in Ex. 1.053 and 1.076, SBC Wisconsin can no longer account for all the participants in the market. And, substitution by wireless and VoIP for which SBC lacks data will continue to grow. SBC is willing, however, to report some data suggested by staff for a two-year period.

**CUB Position:** CUB took no position on this issue.

**Analysis:** The sustainability of the current level of competition has been brought into question due to a number of developments. Accurate and timely market share data would allow the Commission to periodically monitor whether the suspension should be revoked. To that end, staff suggested that SBC Wisconsin submit three reports on a quarterly basis. (Tr. 925.)

The first report would portray CLEC Residential UNE/911/Resale market share by exchange, similar to Ex. 4.12. SBC's specific objections to this report are that staff has the ability to generate a similar report from data it obtains directly from CLECs and that the information may be subject to proprietary restrictions. On the other hand, SBC has access to the 911 database, for which proprietary restrictions were overcome in this docket, and having SBC file a report allows staff to either save the significant staff resources that are used to obtain data from the numerous CLECs, or serve as a double check to information obtained from the CLECs.

The second suggested report is total SBC residential primary lines by exchange, including percent decline from peak. SBC states that it provides total residential lines by

exchange as part of its annual report to the Commission. SBC could provide the primary residential line counts in Rate Groups A and B as supplemental information annually for two years, if the Commission believes such information would be of value.

The final report would be market share data by rate group for primary residential service, based on statewide penetration, census, and SBC line data, reported according to a methodology developed in consultation with staff and approved by the Commission. This report would be similar to Ex. 1.053. If the Commission believes such information would be of value, SBC is willing to provide updates annually for two years. (Tr. 729-730.)

#### **IV. Proceedings in Other States**

**Transcript References:** 853-854 (Linden); 329-333 (Taylor).

**Initial Brief citations:** 33 (CUB).

**Reply Brief citations:** 1 (SBC).

Other state commissions have addressed similar proposals to deregulate prices for residential BLES. It may be useful for the Commission to learn from the experiences of other state commissions by seeing how they addressed similar proposals. However, differences in markets, regulation, and legislation limit the strict applicability of decisions reached by other states to Wisconsin.

Staff testified that decisions by four state commissions have been issued since 2001 in response to SBC petitions to suspend or remove residential pricing restrictions. These decisions were a mixed bag of approvals, partial approvals, and denials. After these 4 decisions, out of 13 states in which SBC operates, only Missouri – and in just 2 exchanges – currently grants more pricing flexibility than what SBC *currently* enjoys in Wisconsin. (Tr. 853-854.)



SBC testified regarding similar regulatory changes in states where it does not operate and concluded that staff's conclusions are not true for all states. (Tr. 329-333.)

Following the hearing where this testimony was provided, the Kansas commission denied a similar SBC petition for price deregulation of BLES, whereas the commissions in Michigan and Oklahoma have decided to remove price caps on SBC's residential local services in those states.

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## ISSUES LIST

**(Developed at Prehearing Conference of February 18, 2005)**

1. What is the relevant market or markets that constitute or include SBC's basic local exchange service as provided in its 17 largest exchanges,<sup>13</sup> and will it be reasonable to separate the market or markets into more competitive and less competitive segments, and to differentiate SBC's 17 largest exchanges for separate treatment? This issue considers all market-defining factors, such as, but not limited to, relevant product and service offerings, facilities, customer classes, and geography.

2. Does effective competition exist in the relevant market that constitutes or includes SBC's basic local exchange service in the 17 largest SBC exchange territories? What is meant by or included in "effective competition?"

a) Assuming effective competition is demonstrated in the relevant market, under Wis. Stats § 196.195(2), does that competition justify a lesser degree of regulation for SBC's basic local exchange service and will competition under such lesser degree of regulation serve the public interest?

b) With respect to SBC's basic local exchange services in its 17 largest exchange territories,

i) How many competitors are providing the same, equivalent or substitutable services?

ii) What are the size and other characteristics of the competitors?

iii) What is the extent to which the same, equivalent or substitutable services are available?

iv) What options are available for buyers of basic local exchange service to obtain the same, equivalent or substitutable services at comparable rates, terms and conditions?

v) How easy will it be for alternative providers to make the same, equivalent or substitutable services available at comparable rates, terms and conditions?

vi) What is the current market power and the trend in market power for providers of the same, equivalent or substitutable services?

1) What consideration, if any, should be given to the cessation of UNE-P as a wholesale offering?

2) If consummated, what will be the impact of the disappearance of AT&T and/or MCI (and Sprint) via currently proposed mergers upon the definition of relevant market and other issues in this proceeding?

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<sup>13</sup> Rate Groups A and B consist of the 17 largest of SBC's 77 exchanges: Appleton, Beloit, Eau Claire, Fond du Lac, Green Bay, Janesville, Kenosha, Madison, Manitowoc, Menomonee Falls, Milwaukee, Neenah, Oshkosh, Racine, Sheboygan, Stevens Point, and Waukesha.

vii) What affiliates, if any, of telecommunication utilities providing basic local exchange service may affect competition for the patronage of those customers?

1) What consideration, if any, should be given to SBC affiliate practices that require a customer to subscribe to BLES components as a condition of receiving affiliate services?

viii) What barriers to entry or exit exist for providers or potential providers of basic local exchange service?

ix) Are there any additional factors that should be considered in evaluating whether a lesser degree of regulation for basic local exchange service as proposed in the petition will be in the public interest?

1) How should compliance with Wis. Stat. § 196.204(1) and (5) be verified, if a factor to be considered in granting the petition?

c) What type of competition under a lesser degree of regulation will be sufficient to generate the public interest benefits?

3. Assuming the Commission determines that sufficient effective competition exists to justify lesser regulation in some segments or in all segments of the relevant market or markets, what level of regulation should be imposed, per Wis. Stats §196.195(3) and (4)?

a) Is it in the public interest to establish different levels of regulation for more competitive and less competitive markets or segments of the market for or in which basic local exchange service is provided?

b) Does the public interest require a different level of regulation for the provision of basic local exchange service by SBC than is required for other providers of basic local exchange service in more competitive markets?

c) Does the public interest require a different level of regulation for the provision of basic local exchange service by SBC than is required for other providers of basic local exchange service in less competitive markets?

d) Assuming the answer to b) and/or c) is in the affirmative, what different regulatory requirements should be established for SBC's provision of basic local exchange service in its 17 largest exchanges?

e) For the purpose of Wis. Stat. § 196.195(3)(b), what level of regulation will not hinder competition and is consistent with protecting the public interest as framed by Wis. Stat. §§ 196.03(1) and 196.03(6)?

f) What is the market effect of suspension of all or portions of price regulation under Wis. Stat. § 196.196(1) with respect to SBC's provision of basic local exchange service in its 17 largest exchange territories? What effect, if any, could grant of the petition have upon an asserted price squeeze on CLECs purchasing loops at wholesale from SBC?

4. Assuming that Commission action is supported by the findings and determinations under 1 through 3 above, what specific actions are reasonable for the Commission to take under Wis. Stat. § 196.195(5), (7), and (8)?

a) Should all or portions of price regulation under Wis. Stat. § 196.196(1) be suspended with respect to basic local exchange service in SBC's 17 largest exchanges?

1) Should the price cap on BLES components in para. (a) be removed by suspension that paragraph?

2) Should the limitations on rate restructuring in para. (e) be clarified and/or suspended to permit deaveraging of SBC's BLES rates on a rate group-by-rate group basis?

3) What customer notice provisions of rate increases should be established?

b) Should the provision of basic local exchange service be subject to some or all of the proposed revisions to the rules in Wis. Admin. Code Ch. PSC 165, such as required disclosures at the initial point of sale? If so, should compliance be assured through a program funded by SBC? Should this be an ombudsman-type program offered or supported by SBC?

c) Should the service quality credit program authorized by the June 8, 2001 Temporary Order in docket 6720-TI-166 be adopted in whole or in part, as a condition of suspension?

d) Should the suspension of all or part of Wis. Stat. § 196.196(1) be conditioned with a clause providing for automatic revocation of the suspension in the event of violations of other statutes? What statutes would be appropriate?

e) Should SBC fund and execute some form of customer education program publicizing the availability of basic local exchange service?

f) Should basic local exchange service rates be capped in any manner? For example, should the rates be capped at a percentage of SBC's lowest-priced package that includes any service that is a tariffed part of basic local exchange service? Should the rates be capped at Zone C rates or at some percentage relationship to Zone C rates?

g) Should any suspension be accompanied by changes in accounting and/or reporting requirements? Should reports on market competition be required? What other kinds of reports should be sought?

h) What other conditions, if any, should be placed on SBC's provision of basic local exchange service in less competitive markets? In more competitive markets?

i) Are there requirements that the Commission can adopt to reduce barriers to entry and assure markets become/remain competitive?

j) Should the Commission adopt any companion policies to protect continued access to affordable basic local exchange service for particular customer segments?

5. What relief, if any, should be granted or denied in this proceeding, considering, without limitation, the potential effect of mergers with long distance providers and whether this petition may be premature in light of possible market and regulatory changes?

## STATUTES AND RULES

### Wis. Stat. § 196.195(2)-(10)

(2) HEARING ON PARTIAL DEREGULATION. (a) Except as provided under par. (b), in response to a petition from any interested person or upon its own motion, the commission may hold a hearing to determine whether effective competition exists in a market for a telecommunications service which competition justifies a lesser degree of regulation by suspending the application of one or more provisions of law under sub. (5) and whether competition under a lesser degree of regulation in that market will serve the public interest. In making this determination, the commission shall consider factors including:

1. The number and size of telecommunications utilities or other persons providing the same, equivalent or substitutable service in the relevant market.
2. The extent to which the same, equivalent or substitutable service is available in the relevant market.
3. The ability of customers in the relevant market to obtain the same, equivalent or substitutable services at comparable rates, terms and conditions.
4. The ability of telecommunications utilities or other persons to make the same, equivalent or substitutable service readily available in the relevant market at comparable rates, terms and conditions.
5. The relevant market power of each telecommunications utility or other person providing the same, equivalent or substitutable service in the relevant market and any apparent trends in how the market power of each telecommunications utility may change in the future.
6. Any affiliation of any telecommunications utility providing the service in the relevant market which may affect competition.
7. The existence of any significant barrier to the entry or exit of a provider of the service in the relevant market.

\* \* \*

(3) LEVELS OF REGULATION. If after the proceeding under sub. (2) the commission has determined that effective competition exists in a market for a telecommunications service that justifies lesser regulation, the commission shall establish the level of regulation for telecommunications utilities providing the service in that market as follows:

(a) The level of regulation imposed upon all telecommunications utilities providing the service in that market shall be equal unless the commission finds that the public interest requires that different regulatory requirements be imposed.

(b) The level of regulation imposed upon all telecommunications utilities providing the service in that market shall be the amount of regulation which does not hinder competition and is consistent with protecting the public interest.

(4) FINDINGS OF FACT. (a) Except as provided in par. (b), the commission shall issue written findings of fact on each of the factors specified in sub. (2) (a) 1. to 7. and on any other factors considered by the commission in making the following determinations:

1. Whether effective competition exists in the market for the telecommunications service that justifies lesser regulation.

2. The level of regulation to be imposed upon each telecommunications utility providing the service in that market.
3. The different regulatory requirements, if any, determined for each telecommunications utility providing the service in the market.
4. The provisions of law to be suspended, if any, under sub.(5).

\* \* \*

(5) COMMISSION ACTION. If after the proceedings under subs. (2), (3) and (4) the commission has determined that effective competition exists in the market for the telecommunications service which justifies a lesser degree of regulation and that lesser regulation in that market will serve the public interest, the commission may, by order, suspend any of the following provisions of law, except as provided under subs. (7) and (8): ch. 201 and s. 196.02(2); s. 196.05; s. 196.06; s. 196.07; s. 196.09; s. 196.10; s. 196.12; s. 196.13 (2); s. 196.19; tariffing requirements under s. 196.194; s. 196.196 (1) or (5); s. 196.20; s. 196.204 (7); s. 196.21; s. 196.22; s. 196.26; s. 196.28; s. 196.37; s. 196.49; s. 196.52; s. 196.58; s. 196.60; s. 196.604; s. 196.77; s. 196.78; s. 196.79; and s. 196.805.

(7) CONDITIONS ON DEREGULATION. If the commission suspends the application of any provision of law to a telecommunications utility under sub. (5), it may require the telecommunications utility to comply with any condition reasonably necessary to protect the public interest because of the suspended application.

(8) RECORDS FOR COMMISSION REVIEW. The commission may suspend the application of a provision of law relating to an accounting or reporting requirement under sub. (5) only if, with consideration given to any conditions imposed under sub. (7), the commission determines that it will have enough information to determine whether the suspension of the application of any provision of law under sub. (5) is justified at any time after the suspension is ordered.

(10) REVOCATION OF DEREGULATION. If necessary to protect the public interest, the commission, at any time by order, may revoke its order to suspend the applicability of any provision of law suspended under sub. (5).

Wis. Stat. § 196.03(1) and (6)

Utility charges and service; reasonable and adequate. (1) Subject to s. 196.63, a public utility shall furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, water, telecommunications service or power produced, transmitted, delivered or furnished or for any service rendered or to be rendered in connection therewith shall be reasonable and just and every unjust or unreasonable charge for such service is prohibited and declared unlawful.

\* \* \*

(6) In determining a reasonably adequate telecommunications service or a reasonable and just charge for that telecommunications service, the commission shall consider at least the following factors in determining what is reasonable and just, reasonably adequate, convenient and necessary or in the public interest:

- (a) Promotion and preservation of competition consistent with ch. 133 and s. 196.219.

- (b) Promotion of consumer choice.
- (c) Impact on the quality of life for the public, including privacy considerations.
- (d) Promotion of universal service.
- (e) Promotion of economic development, including telecommunications infrastructure deployment.
- (f) Promotion of efficiency and productivity.
- (g) Promotion of telecommunications services in geographical areas with diverse income or racial populations.

1985 Wis. Act 297, Section 1

SECTION 1 . Legislative intent . The legislature finds that the telecommunications industry is in a state of transition, providing opportunities for new sources of competition, and that changes in technology, public policy and federal regulatory and judicial initiatives revolutionizing the industry . It is the intent of the legislature that :

(1) Universal telecommunications services continue to be available to the people of this state at just and reasonable rates and be of sufficient quantity, quality and reliability to meet the public interest .

(2) The public service commission have flexibility to deal with the current period of transition in the industry, while keeping as its main purpose the protection of the interests of ratepayers of public utilities offering regulated telecommunications services .

(3) The public service commission shall, when consistent with the protection of ratepayers and with other public interest goals established by the legislature, rely on competition rather than regulation to determine the variety, quality and price of telecommunications services.

(4) The public service commission ensure that, in general, users of regulated telecommunications services and facilities pay only reasonable and just charges for such services and facilities and that such charges do not include costs associated with the competitive activities of telecommunications utilities.

(5) Partial deregulation be a regulatory system to facilitate competition where it may exist. When the market for a telecommunications service is fully competitive, the level of regulation imposed by the public service commission upon all similarly situated providers of that service shall be equal.

Wis. Admin. Code § PSC 163.05

Rate increases and rate structure changes independent of the price cap index. (1) Under s. 196.196 (1) (e) 1., Stats., a price-regulated telecommunications utility, not earlier than 3 years after electing to become price-regulated, may alter its rate structure or increase rates for price-regulated services upon 120 days' prior notice to the commission. Under s. 196.196 (1) (e) 2., Stats., the commission upon a complaint by an affected party or on its own motion, may initiate an investigation. Within 120 days after initiating the investigation and following a hearing, the commission shall issue an order approving, modifying or rejecting the rate change.

(2) The API and PCI as set forth in s. PSC 163.04 (2) through (7), shall be reinitialized to 100 upon any rate increase or rate structure change in this section that results in the 3-year maximum API exceeding the 3-year maximum PCI.

(3) The notice required under s. 196.196 (1) (e), Stats., for a price-regulated telecommunications utility to change its rate structure or increase rates for price-regulated services shall be accompanied with the following information:

(a) Documentation that addresses the factors specified in s. 196.03 (6), Stats., for determining what is just and reasonable, and the impact of the proposed change on the public interest.

(b) A cost of service study supporting a change in rates above those allowed in s. 196.196 (1) (c), Stats. The cost of service study shall demonstrate that the cost of providing one or more price-regulated services, and all price-regulated services in the aggregate, have increased due to cost allocations or changes in the costs of providing that service that are outside the control of the telecommunications utility and the change in cost will not be fully offset by resulting changes in the GDPPI.

(c) If the rate change is based on changes in the allocation of costs outside of the control of the telecommunications utility, documentation shall include a description of the change in cost allocation methods, when management became aware of the change, the impact of the change on both the profitability of total company operations and the cost of providing price-regulated services, other steps taken by the utility to mitigate the impact of the change, and evidence that the change will disproportionately impact that utility with respect to other providers or carriers.

(d) If the reason for the rate change is based on effects of competition, a description of the actual or potential harm caused by competition if the proposed alteration of rate structure or rate increase is not granted.

(e) An estimate of the dollar amount of the monthly change for the typical residential customer that will result if the rate change becomes effective.

(f) The percent increase as a result of the rate change by rate element, by class and in total.

(g) If the rate change is based on changes in the costs of providing the service that are outside of the control of the telecommunications utility, documentation shall include a description of and the estimated annual impact of each changed cost given current rates and revenue forecasts, when management became aware of the change, the portion of the impact of the cost change which will not be fully offset by resulting changes in the GDPPI, support that the impact of the cost change will persist over several years, and the reasons why the cost change is



not part of the normal risk of doing business which should be recovered by increasing productivity instead of increasing rates or prices.

(h) Full explanations of reasons for changes in tariff structures, including applicable tariff regulations.

(i) Documentation to reconcile changes in rate design to overall revenue increase and to justify allocation of the proposed increase among various services or customer classes.

## UNCONTESTED ISSUES

### 1. **Automatic Revocation (Issues List #4.d. )**

**Issue:** Should the suspension of all or part of Wis. Stat. § 196.196(1) be conditioned with a clause providing for automatic revocation of the suspension in the event of violations of other statutes? What statutes would be appropriate?

**Transcript citations:** 247(Taylor); 698 (Tattini).

**SBC Position:** There is no need for a clause for automatic revocation of the suspension of Wis. Stat. § 196.196(1). Under Wis. Stat. § 196.195(10), the Commission already has the authority to revoke the suspension of price caps if SBC Wisconsin acts in ways contrary to the public interest. The Commission should exercise this authority, if at all, on a case-by-case basis because not all violations of a statute have the same significance. Some may cause substantial harm, while others may be essentially harmless.

**CUB Position:** CUB believes that the Commission should not rely on its ability to revoke a suspension. CUB took no position regarding whether a suspension should be automatically revoked for violation of statutes.

**Analysis:** Neither CUB nor staff specifically testified in opposition to SBC's proposal that revocation of price regulation suspension be considered on a case by case basis.

**2. New Consumer Protection Rules (Issues List # 4.b. )**

**Issue:** Should the provision of BLES be subject to some or all of the proposed revisions to the rules in Wis. Admin. Code Ch. PSC 165 (being considered in docket 1-AC-184), such as required disclosures at the initial point of sale?

**Transcript citations:** 245-246 (Taylor); 697 (Tattini).

**SBC Position:** SBC is not seeking relief from the existing requirements of PSC Chapter 165 and any future applicable revisions implemented by the Commission. There is no need for SBC to impose the proposed revisions on SBC prior to promulgation of final revised rules, nor fund a compliance program. (Tr. 697.)

**CUB Position:** CUB did not take a position on this issue.

**Analysis:** SBC's testimony was unopposed.

**3. Service Quality Credit Program (Issues List # 4.c.)**

**Issue:** Should the service quality credit program authorized by the June 8, 2001, Temporary Order in docket 6720-TI-166 be adopted in whole or in part, as a condition of suspension?

**Transcript references:** 910-911 (Larson); 697-698 (Tattini); 246-247 697-698 (Taylor).

**Initial Brief citations:** None

**Reply Brief citations:** None

**SBC Position:** SBC testified that it is not seeking relief from the service quality credit program imposed in Docket 6720-TI-166 and that the issue of when that service quality program will be terminated should be part of a separate proceeding before this Commission. (Tr. 697; Ex. 4.01.)

**CUB Position:** CUB took no position on this issue.

**Analysis:** On June 8, 2001, the Commission issued a Temporary Order in docket 6720-TI-166, instituting a service guarantee and credit program for SBC. The service guarantee and credit program provides payments to customers if they are out of service longer than 36 hours, if service installation takes more than 5 days, or if SBC misses a scheduled appointment. Unless the Commission takes action to end it, the program will remain in effect.

If its petition is granted, SBC's direct financial incentive to invest in infrastructure and maintain service quality will be reduced. The price regulation formula includes incentives and disincentives related to infrastructure investment and quality of service performance. These incentives and disincentives are applied as a percentage of price regulated rates. To the extent that fewer services, and less revenue from those services, are subject to the formula, the maximum incentives and disincentives available under that formula are diluted. On the other hand, the lessening of this regulatory incentive may be somewhat counterbalanced by increased market-based incentives to provide quality service. (Tr. 910-911.)

Neither CUB nor staff proposed that continuation of the service guarantee program be a condition of relief in this proceeding. If the Commission wishes to maintain this incentive for SBC to provide high quality service, it can simply do nothing in this docket. The issue of whether to end or modify SBC's service guarantee credit program can be addressed in docket 6720-TI-166, perhaps after the Commission addresses consumer protection rules in docket 1-AC-184.

**ISSUES IN 6720-TI-196**